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No. _____

In The

Supreme Court of the United States

PARTIDO ACCIÓN CIVIL,

Petitioner,

v.

COMMONWEALTH OF PUERTO RICO

On Petition For A Writ Of Certiorari To The Supreme Court Of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

Of Counsel
PAUL BENDER
College of Law
Arizona State University
Tempe, AZ 85287-7906
(480) 965-2556

NELSON ROSARIO-RODRIGUEZ
Counsel of Record
P.O. Box 23069
San Juan, PR 00931-3069
(787) 764-0429

NEIL D. O'TOOLE
226 West 12th Ave.
Denver, CO 80204-3625
(303) 595-4777

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Can the Commonwealth of Puerto Rico constitutionally prohibit everyone but lawyers from circulating citizen petitions seeking to place a new political party on the ballot?

PARTIES

In addition to the parties named in the caption, the parties in the Supreme Court of Puerto Rico were Juan R. Melecio, Manuel Herrero, Damaris Mangual and René Arrillaga, individually and in their official capacities as members of the Commonwealth Elections Commission.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

The Partido Acción Civil (Civil Action Party) respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Puerto Rico in this case.

OPINIONS BELOW

The opinions of the San Juan Superior Court (App.[1] C, *infra*, pp. 1c-26c), the Circuit Court of Appeals, Regional Circuit I (App. B, *infra*, pp. 1b-20b), and the Supreme Court of Puerto Rico (App. A, *infra*, pp. 1a-41a), are unreported. The opinion of the Supreme Court of Puerto Rico denying reconsideration (App. D, *infra*, pp. 1d-50d) is also unreported. The opinions reproduced in the Appendix are English translations from the original Spanish, prepared by interpreters certified by the Administrative Office of the United States Courts.

JURISDICTION

The Supreme Court of Puerto Rico entered its judgment on February 25, 2000 (App. A, *infra*, p. 1a), and denied a timely motion for reconsideration on April 25, 2000 (App. D, *infra*, p. 1d). The jurisdiction of this Court is invoked under 28 U.S.C. § 1258.

STATUTES AND REGULATIONS INVOLVED

1. Subsections (3) and (4) of Section 3101 of the Puerto Rico Electoral Act, 16 Laws of Puerto Rico Annotated (L.P.R.A.), provide, in relevant part:

> § 3101. **The parties**
>
> (3) Party by Petition – Shall be any group of citizens who, desiring to appear on the electoral ballot of a general election, shall register as a political party, on or

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[1] "App." citations are to the Appendix to this petition, *infra*.

before June 1 of the election year, by filing with the Commission sworn petitions to such effect, before notary publics duly admitted to the practice of notary, pursuant to the provisions of the Notary Act in effect, who shall collect from the Electoral Commission a fee of one (1) dollar for each valid, notarized petition signed by a number of electors of no less than five (5) percent of the total votes cast for all candidates for the office of Governor in the preceding general election. A government program or political platform, as well as the names and addresses of the group of electors that constitute its central directing body, must also be presented.

The party shall become registered upon acceptance of said sworn petitions, and from that time on may present a complete slate in all the precincts in accordance with the procedures provided in this chapter.

(4) Local Party by Petition – Shall be any group of citizens that for the purpose of appearing on the electoral ballot of precinct, or specific representative district or senatorial district, in a general election, is registered as a local political party, by filing with the Commission sworn petitions to such effect, subscribed in each of the precincts in which its candidacy should appear, by a number of electors which is not less than five (5) percent of the total votes cast in each precinct concerned, for all of the candidates for the office of Governor in the preceding general election. It shall also present a government program or political platform, as well as the names and addresses of the group of voters that constitutes its central directing body.

> The Local Party by Petition shall become registered upon acceptance of said petitions by the Commission. . . .

2. Section 3102 of the Puerto Rico Electoral Act, 16 Laws of Puerto Rico Annotated, provides:

> § 3102. **Invalid petitions for registration of party**
>
> The Commission will reject every petition for the registration of a political party signed by a person:
>
> (a) Who is not a duly registered elector on the date he signs the petition;
>
> (b) Who during the immediately preceding two- (2) year period has signed a petition to register another party; or
>
> (c) Who has not complied with the formalities established in this subtitle or the regulation adopted hereunder, including the veracity and authenticity of the data stated in the registration petition.
>
> The registration petitions of a political party must be filed before the Commission no later than seven (7) days after having taken the oath in question. The Commission, through regulations, shall establish the form and the procedures to be followed for the filing and accepting of said registration petitions.

3. Section 3161 of the Puerto Rico Electoral Act, 16 Laws of Puerto Rico Annotated, provides, in relevant part:

> § 3161. **Officials to swear petitions for primaries**
>
> Petitions for primaries may be sworn to before the officials authorized by law to take oaths, as well as before any elector authorized by the Commission to perform such duty, at the request of each candidate for primaries.
>
> Persons authorized to take oaths related to petitions for primaries shall be deemed

officials of the Commission for all legal effects, and they shall keep a record of all persons sworn, and the date on which the oath has been taken. This record shall be signed and sent to the Commission at the end of the period for filing petitions for primaries. . . .

4. Section 2011 of the Puerto Rico 1987 Notarial Act, 4 Laws of Puerto Rico Annotated, provides, in relevant part:

§ 2011. **Notarial practice – requirements**

Only those presently authorized to practice the notarial profession and those attorneys who in the future are admitted to practice the profession, who are members of the Puerto Rico Bar Association and are thereafter authorized to practice as notaries by the Supreme Court of Puerto Rico, shall practice the notarial profession in the Commonwealth of Puerto Rico.

5. Section 4.7 of the Rules for the Registration of Party By Petition of the Commonwealth Elections Commission provides as follows:

§ 4.7. **Reasons to deny a registration petition**

The Commission will deny any inscription petition if:

(a) on the date of submitting the petition the person is not a registered voter;

(b) the elector signed a petition for the registration of another party during the period of two (2) years immediately precedent to the date of submitting the petition;

(c) the petition is submitted seven (7) days after taking the oath;

(d) the signature or mark is missing;

(e) there is a mark in substitution for the signature if the person stated that he or she knows how to write;

(f) the signature of the petitioner is incompatible with the one that appears in the petition for registration;

(g) there is a discrepancy in the name of the father, mother or both;

(h) there is a discrepancy in the age;

(i) there is no notarial seal;

(j) the petition does not have the notary's signature;

(k) the petition has been notarized before a notary whose name has not been notified to the Commission;

(l) the petition appears duplicated and given to the same party;

(m) the petition lacks any required information.

STATEMENT

Introduction

Puerto Rico's election code requires new political parties seeking access to the Commonwealth's general election ballot to file individual party-registration petitions signed by approximately 100,000 registered voters. Unlike other election-related petitions in Puerto Rico, these petitions are valid only if each is separately notarized by a lawyer who is both a notary and a member of the Puerto Rican bar. As a result, only lawyers can effectively circulate the petitions necessary for a new party to appear on the ballot. This lawyer-only restriction has made it virtually impossible for petitioner, or any other new political party, to obtain a place on the ballot; no new party has been registered since 1984.

Petitioner challenged the lawyer-notarization requirement in Puerto Rico's courts as a violation of both the Puerto Rico and United States Constitutions. The Puerto Rican courts have upheld the lawyer-notarization requirement by applying rational basis review. Petitioner

believes that this was clear constitutional error. This Court's decisions in *Meyer v. Grant*, 486 U.S. 414 (1988), and *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), require strict judicial scrutiny – not rational basis scrutiny – of laws substantially reducing the number of citizens able to circulate initiative petitions. That rule should apply as well to laws limiting those who may effectively circulate petitions seeking ballot access for a new political party. If heightened scrutiny is correctly applied to Puerto Rico's rule that only lawyers may notarize petitions supporting ballot access for a new political party, it is plain that the rule is not narrowly tailored to serve the Commonwealth's legitimate interests.

A. Puerto Rico's Electoral System

1. The Commonwealth of Puerto Rico holds Commonwealth-wide general elections for all elected offices every four years. Only "registered" political parties may appear on the ballot throughout Puerto Rico in these elections. 16 L.P.R.A § 3101(3), *supra*, p. 1. There are currently three such Commonwealth-wide registered parties in Puerto Rico: the New Progressive Party (PNP), the Popular Democratic Party (PPD), and the Puerto Rican Independence Party (PIP). The first two of these Parties (the PNP and the PPD), have governed Puerto Rico since 1944. They received, respectively, 51% and 45% of the vote for Governor in the 1996 general election. Registered parties are entitled to receive straight-party votes and present a full slate of candidates on the general election ballot. Parties remain registered as long as they continue to receive a minimum vote total; if they fail to achieve that goal at a general election they lose their registered status.[2]

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[2] Registered parties must receive either 3% of the straight party vote or 5% of the vote for Governor to remain on the ballot. 16 L.P.R.A. § 3101(1). Voters may vote a straight-party ticket for all of the candidates of a registered party by marking a single box.

The registered parties receive substantial public funding for their electoral activities and also have an important official role in the administration of elections. Registered parties are entitled to receive $300,000 per year from the Commonwealth's Electoral Fund in non-election years and $600,000 in general-election years. 16 L.P.R.A. § 3116. The Commonwealth Elections Commission, which administers the Electoral Fund and enforces the provisions of the election laws, is composed of a Chairman and Commissioners designated by each registered party. 16 L.P.R.A. §§ 3004, 3007. Political groups that are not registered parties have no realistic opportunity to win an election; they cannot present a full slate of party candidates, cannot receive straight-party votes, have no representation on the Elections Commission, and they must compete with parties that receive substantial public funding.

2. This case concerns the constitutionality of Puerto Rico's statutory process for achieving Commonwealth-wide registered party status. A new party seeking such status must, on or before June 1 of the year in which a general election is to be held, file with the Elections Commission individual registration petitions, each signed and sworn to by a registered voter. The number of such petitions must be equal to at least 5% of the votes cast for Governor in the preceding general election.[3] 16 L.P.R.A.

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[3] Any registered voter who has not signed a petition to register another party within the preceding two-year period may sign and swear to a petition. 16 L.P.R.A. § 3102(b), *supra*, p. 3. Each registered voter wishing to support a new party's attempt to register must sign a separate petition, which is in the form of an affidavit. In addition to the voter's name and signature, each petition contains the voter's date and place of birth, the names of the voter's father and mother, the voter's address, and the statement that the voter is registered and has not signed another party's petition within two years. A petition form is reproduced in Appendix F to this petition.

§ 3101(3). The number of petitions currently required is 97,874 (5% of the votes cast for Governor in 1996).

At issue in this case is the additional statutory requirement that each of these 97,874 separate registration petitions be signed and sworn to before "notary publics duly admitted to the practice of notary." 16 L.P.R.A. § 3101(3), *supra*, p. 2. This is not a notarization requirement of the type that is familiar in the continental United States, where notaries are not part of the legal profession and are widely available. In Puerto Rico, only "attorneys . . . who are members of the Puerto Rican Bar Association and are thereafter authorized to practice as notaries by the Supreme Court of Puerto Rico, shall practice the notarial profession." 4 L.P.R.A. § 2011, *supra*, p. 4. In Puerto Rico, therefore, one can be a lawyer without being a notary, but one cannot be a notary without being a lawyer. For each citizen registration petition to be valid, it must thus be signed and sworn to before a practicing lawyer who has also been certified as a notary by the Supreme Court of Puerto Rico.[4] There are presently about 6,700 such attorney-notaries in Puerto Rico out of approximately 10,000 members of the Puerto Rican bar. (App. 26a).

After it is notarized, the petition must then be filed with the Elections Commission within seven calendar days. 16 L.P.R.A. § 3102, *supra*, p. 3. Within that seven-day period the attorney-notary must complete extensive paperwork required by law for all notarizations by lawyer-notaries. The attorney-notary is entitled to collect from the Elections Commission a fee of one dollar for each valid, notarized petition that is filed. 16 L.P.R.A. § 3101(3). In seeking registration, a new party must, before soliciting voter petitions, present to the Elections

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[4] In order to become a member of the Puerto Rican bar, a resident of Puerto Rico must graduate from both college and law school and pass the Commonwealth's bar examination. An additional examination is required for authorization to become a lawyer-notary. Notaries must pay annual Bar Association dues and post a bond for at least $15,000. 4 L.P.R.A. § 2011.

Commission "a government program or political platform, as well as the names and addresses of the group of electors that constitute its central directing body." *Ibid.* After the petitions are submitted, the Elections Commission is required to review them to insure their validity. That review must include a determination whether each registered voter's signature and identifying data are compatible with the signature and data on file with the Commission. Rules for the Registration of Party by Petition of the Elections Commission § 4.7, *supra*, pp. 4-5.

3. The requirement that every registered voter who wishes to submit a Commonwealth-wide political party registration petition must sign and swear to that petition in the presence of an attorney-notary was first enacted into law in Puerto Rico in 1978. Since 1980, the date when that new requirement first went into effect, only one party has been able to achieve Commonwealth-wide registration. That party, the Puerto Rican Renovation Party (PRP), had been a faction of the New Progressive Party (PNP), which held power in Puerto Rico from 1976 to 1984. The PRP's president was the PNP's elected mayor of San Juan and its vice president had twice been speaker of Puerto Rico's House of Representatives. The PRP participated in the 1984 election, but did not secure enough votes to remain on the ballot. It tried to register again in 1988, but failed. No new party has been able to obtain Commonwealth-wide ballot access since 1984, although seven parties, including petitioner, have tried to do so. Since that time, two parties have achieved local registration, to which the attorney-notary requirement does not apply (App. 16d-17d).

The attorney-notarization requirement is not applied by Puerto Rican law to any other ballot-access procedure. For example, a candidate seeking a place on the ballot in a primary election held by one of the three registered parties needs to gather a minimum number of notarized signatures, but these signatures may be notarized by so-called *ad hoc* notaries, appointed by the Commonwealth Elections Commission. See 16 L.P.R.A. § 3161, *supra*, p. 3.

Ad hoc notaries do not need to be lawyers or have any other particular qualifications. They are ordinarily campaign workers who have volunteered to work for a candidate; the candidate submits their names to the Commission for *ad hoc* notarial appointment. The *ad hoc* notary process for gathering petition signatures also applies to candidates seeking a place on the general election ballot as independent candidates, 16 L.P.R.A. § 3177, and the Electoral Act does not require parties seeking party registration and ballot position as local, rather than Commonwealth-wide, parties to use lawyer notaries. See 16 L.P.R.A. § 3101(4), *supra*, p. 2. The *ad hoc* notary process has also recently been used where public funding, as well as ballot position, was involved. In Puerto Rico's recent (1998) plebiscite election (concerning the Commonwealth's future political relationship with the United States), political groups supporting one of the several choices on the plebiscite ballot were entitled to receive $666,666 in public funding from the Elections Commission if they submitted approximately 2,500 notarized petitions. (App. 21a, 26d-27d). These petitions were valid if sworn to before *ad hoc* notaries – lawyer notarization was not required. Thus, the requirement of having every voter petition separately notarized by a lawyer is applied only to new parties seeking a place on Puerto Rico's general election ballot.

B. The Civil Action Party

Petitioner Civil Action Party is a political organization created by citizens seeking to participate meaningfully in the political life of Commonwealth of Puerto Rico. They believe that the two parties that have monopolized power in Puerto Rico for the last half-century are not willing to bring, nor are they capable of bringing, needed changes to the way in which Puerto Rico is governed. The Party's goals include a more efficient, responsive and participatory government. Party members believe in the need for a more productive economy, free

of federal funds and transfers, and in a new form of political relationship between the Commonwealth and the United States – a relationship that would lead to real and lasting economic development in Puerto Rico.

The Civil Action Party's members have been seeking since July of 1997 to register it on a Commonwealth-wide basis so that a slate of its candidates could appear on the ballot throughout Puerto Rico in the November, 2000, and subsequent general elections. The Party has a candidate for Governor, Enrique Vázquez Quintana, who is a respected physician and former Commonwealth Secretary of Health. He has written three books about the Party's ideology and his experiences as a Commonwealth cabinet member. Announcement of his potential candidacy generated substantial public interest. The Party has registered its name, emblem and the members of its directing body with the Commonwealth Elections Commission and has complied with all other requirements for registration as a political party except for the submission of the requisite number of lawyer-notarized registration petitions (App. 4d). The Party has not complied with this requirement because it has found it impossible to arrange for a sufficient number of lawyers to spend the time necessary to canvass 97,874 registered voters. (App. 6e, 14e-15e).

C. Proceedings Below

1. The complaint in this case (App. E, *infra*) was filed in October, 1998. It challenged the constitutionality, under both the Puerto Rico and United States Constitutions, of the statutory requirement (16 L.P.R.A. § 3101(3)) that party registration petitions be signed and sworn to before an attorney-notary.[5] The complaint alleged interference

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[5] The complaint also challenged the statutory requirement that each petition be filed with the Elections Commission within seven days of its having been sworn. 16 L.P.R.A. § 3102. Although petitioner believes that the seven-day period for filing

with the Party members' federal constitutional rights to free expression and political association, its right of access to the ballot, the right to vote, and violations of the due process and equal protection clauses of both constitutions (App. 5e-9e). Plaintiff sought declaratory relief, a permanent injunction against enforcement of the challenged provision, and an order permitting the party, in seeking party registration, to utilize the *ad hoc* notary process employed in party primary elections, for independent candidates, for local party registration, and in the 1998 plebiscite (App. 12e-16e).

The complaint alleged that the attorney-notary requirement makes it impossible for the Party to gather the number of signatures required for registration (App. 5e). Although the Party had more than twenty non-lawyer registered voters prepared to canvass for registration petition signatures and act as *ad hoc* notaries, if that procedure were to be made available, it had located only two attorneys willing to do that work. Those attorneys were able to work on petition canvassing for only a few hours on weekends and holidays (App. 14e-15e). Attorneys are generally unwilling to serve as notaries for the Party in gathering signatures because "it is prohibitive for an attorney to leave his/her office – with the cost of opportunity that this implies – to go to the street, house by house, or to public places to gather endorsements," and to complete the required paperwork (App. 6e).

2. Defendants moved to dismiss the complaint for failure to state a claim upon which relief could be granted. The Superior Court granted this motion (App. C, *infra*). The court first held that the Party, as an organization

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sworn petitions with the Commission is unnecessarily brief, it does not seek certiorari from the decision of the Supreme Court of Puerto Rico upholding that requirement. The seven-day deadline is especially onerous in combination with the lawyer-notarization requirement, which is the subject of the certiorari petition, because of the extensive paperwork required of lawyer-notaries within this brief period.

alleging difficulty in registering, had standing to challenge the two statutory provisions (App. 6c-8c). It then held that the doctrine of primary jurisdiction did not require the Party initially to seek relief through proceedings before the Elections Commission (App. 8c-10c). On the merits of the Party's claims, the court relied upon the fact that the requirement of notarizing new party registration petitions had been upheld in this Court's decision in *American Party of Texas v. White*, 415 U.S. 767 (1974). (App. 20c). The court acknowledged in this connection that Texas did "not require notaries to be lawyers," but said that there was no reason "to conclude that the requirement to notarize petitions is only constitutionally valid when the law does not require public notaries to be lawyers" (*Ibid.*). The court held that the attorney-notary requirement "satisfies the State's important interest in preventing fraudulent and frivolous candidacies, that the signatures on the petitions be reliable and that political organizations demonstrate that they have the support of the electorate" (App. 22c).

The Party's equal protection claim was based on the fact that candidates affiliated with the established parties were able to use non-lawyer *ad hoc* notaries in seeking to place their names on the ballot in primary elections, while new parties were not permitted to use the *ad hoc* device. The court held that "this fact does not constitute discrimination based on political ideology, nor unequal treatment," because "[t]he [Civil Action Party] is not equally situated with respect to the traditional parties, because of the fact that it has not been constituted as a party by petition, pursuant to the provisions of the Electoral Act" (App. 22c-23c).

The court's opinion acknowledged that the impact of the requirement that petitions be notarized by lawyers was "substantially onerous," but stated that "a substantially onerous requirement is not inexorably equal to an unconstitutionally onerous one" (App. 23c). The opinion did not address the question whether the challenged

requirements were narrowly tailored to serve the Commonwealth's interests, nor did it explore whether less onerous requirements, such as the widely utilized *ad hoc* notary procedure, supplemented by the Elections Commission's review of the validity of each petition, might satisfactorily serve those interests.

3. The Superior Court's decision was affirmed by the Circuit Court of Appeals (App. B, *infra*). Expressly applying the standard "known in our jurisdiction as the rational nexus or traditional minimum" test (App. 15b), the court held that the challenged registration requirements "do not establish a total arbitrary restriction which does not have any relationship whatsoever to the legitimate interests of the State . . . . [P]laintiff has not been able to establish that no rational relationship exists between the legal requirements and the legitimate governmental purpose." (App. 18b). The court identified avoiding electoral fraud and corruption, fraudulent or frivolous candidacies, and possible voter confusion in the presence of multiple candidates as the governmental interests supporting the attorney-notary requirement. Citing this Court's decisions in *American Party of Texas v. White*, 415 U.S. 767 (1974), and *Williams v. Rhodes*, 393 U.S. 23 (1968), the court stated its view that "the case law of the United States Supreme Court has affirmed the validity of statutes similar to the ones at issue herein" (*Ibid.*)

4. The Supreme Court of Puerto Rico accepted review and affirmed by a vote of four to three (App. 1a-41a, 36a). In rejecting the Party's equal protection claim, the court applied rational basis review and held that "[t]here is a legitimate and objective justification for the State to establish more rigorous requirements" for registration petitions than for other ballot access petitions because of the importance of parties in the electoral system (App. 17a). The majority expressly declined to apply strict scrutiny to the Party's ballot-access claim (App. 23a-24a), apparently because it did not deem the lawyer-notarization requirement to be sufficiently burdensome. The court thus observed that while "[t]here is no doubt" that the

statutory provisions challenged by the party "make it more difficult for a political group that wishes to have access to the electoral ballot to be recognized as a party by petition," that did not show "that the requirements imposed make it *impossible* for a political group to obtain its registration." (App. 26a) (emphasis added). The court upheld the attorney-notary requirement under a standard requiring "a determination as to whether the governmental interests claimed by the state in adopting the regulation are legitimate, and if the importance of those interests justif[ies] the imposition of the regulation challenged" (App. 24a).

Judge Negrón-Garcia, the court's senior member, wrote a dissenting opinion. He observed that the required use of attorney-notaries for party registration petitions was not traditional in Puerto Rico, but had been imposed for the first time in 1978 (App. 38a-39a). In his view, the requirement was unnecessarily restrictive and burdensome. The Commonwealth's interest in preventing fraudulent and frivolous candidates was sufficiently protected by Elections Commission regulations requiring the Commission to determine "the correctness, legality and validity" of each petition, to verify each petition against Commission records, and to reject any petition when "the signature of the petitioner [is] incompatible with what appears in the petition of registration as a voter." (App. 40a). Judges Naveira and Fuster dissented without opinion. (App. 36a).

5. The Party moved for reconsideration, relying primarily on this Court's decisions in *Meyer v. Grant*, 486 U.S. 414 (1988), and *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), both of which employed strict scrutiny, rather than rational basis review, in adjudicating the validity of restrictions on those who could circulate ballot initiative petitions. After hearing oral argument, the court denied the motion, with two Judges dissenting (App. 1d-2d). In a per curiam opinion joined by five members of the court (App. 2d-20d), the court rejected the application of *Meyer* and *Buckley* because of

its view that, unlike the situation in those initiative petition cases, the challenged Puerto Rico party-registration requirements "do not restrict the freedom of speech of the members of the Civil Action Party." (App. 14d). The Court also appeared to rely heavily on its conclusion that the Civil Action Party had not demonstrated "a reasonable diligence . . . to obtain the registration of the party" but had "a tendency to depend exclusively in litigation, with the purpose of obtaining the registration of the Party" (App. 5d). Judge Negrón Garcia again wrote a dissenting opinion (App. 20d-50d). Judge Naveira dissented without opinion (App. 1d).

D. The Parallel Federal Court Proceeding

While the Party's appeal from the dismissal of its complaint was pending in the Commonwealth's Court of Appeals, members of the Party filed a complaint making the same constitutional claims in the United States District Court for the District of Puerto Rico. That complaint was dismissed for failure to state a claim. *Cruz v. Melecio*, Civ. No. 99-1296 (D.P.R. July 7, 1999). Plaintiffs' appeal from this dismissal reached the First Circuit while the Party's appeal from the Puerto Rico Court of Appeals was pending in the Supreme Court of Puerto Rico. The First Circuit reversed the district court's order of dismissal. *Cruz v. Melecio*, 204 F.3d 14 (1st Cir. 2000). It held that the federal action was not barred by res judicata because, under Puerto Rico law, "a commonwealth court judgment cannot be accorded preclusive effect until all available appeals have been exhausted . . . ." *Id.* at 20. On the merits, the court of appeals held that "the district court acted too hastily in dismissing the action for failure to state a potentially viable claim." *Id.* at 22. Citing this Court's decisions in *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Williams v. Rhodes*, 393 U.S. 23 (1968); and *Norman v. Reed*, 502 U.S. 279 (1992), the court concluded that the complaint "alleges facts which, if true, tend to support the appellant's claims that the notarization requirement

and seven-day deadline unduly burden ballot access. If, for example, the appellants can prove that notarization is prohibitively expensive or otherwise difficult to achieve (as the complaint avers), then the Commission will have to show that the notarization requirement is narrowly drawn to advance a compelling governmental interest. This showing requires the Commission to come forward with proof. Whether it ultimately can succeed in this endeavor is a sufficiently open question that we cannot conclude, on the pleadings, that no set of facts exists under which appellants might prevail." *Id.* (citation omitted).

The First Circuit rejected the Commonwealth's contention that this Court's precedents barred the Party's claims as a matter of law. Specifically, in *American Party of Texas v. White*, "there was no intimation that Texas restricted notarial status to members of the bar, and the relevant signature threshold was one percent of the active electorate, not five percent." 204 F.3d at 22. In *Jenness v. Fortson*, 403 U.S. 431 (1971), the Georgia law "required signatures from five percent of the electorate, but contained no concomitant notarization requirement." 204 F.3d at 22. The First Circuit remanded to the district court with instructions to "stay proceedings pending the Puerto Rico Supreme Court's decision in the parallel commonwealth court litigation." *Id.* at 25.

REASONS FOR GRANTING THE PETITION

In recent years this Court has, on at least two occasions, acted to protect the constitutional right of United States citizens to seek political change through the circulation of election-related petitions, an activity that the Court has described as "core political speech," entitled to the strongest First Amendment protection. *Meyer v. Grant*, 486 U.S. 414, 422 (1988). In *Meyer*, a unanimous Court struck down Colorado's prohibition against compensating the circulators of ballot-initiative petitions. And in *Buckley v. American Constitutional Law Foundation*, 525 U.S.

182 (1999), the Court invalidated Colorado's requirement that ballot-initiative petition circulators be registered voters as well as residents. In each case, the Court employed strict or "exacting" judicial scrutiny because "the restrictions in question significantly inhibit communication with voters about proposed political change." In each case the Court found the restriction at issue "not warranted by the state interests . . . alleged to justify these restrictions."[6]

In the present case, the Supreme Court of Puerto Rico, erroneously using rationality scrutiny rather than any form of heightened judicial scrutiny, has upheld a Puerto Rican statute that permits only lawyers to circulate petitions seeking to place a new political party on the ballot. This lawyer-only rule has an immensely more restrictive impact upon the circulation of petitions than the restrictions that were involved in either *Meyer* or *Buckley*. Permitting only lawyers who have also been certified as notaries to circulate registration petitions makes it virtually impossible for petitioner – or any other new political party – to obtain the signatures necessary for ballot access. The effort of citizens to achieve ballot access for a new party in a political system long dominated by two established parties is at least as deserving of constitutional protection as an effort by citizens to put

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[6] The quotations are from *Buckley*, which applied the " 'now-settled approach' that state regulations 'impos[ing] "severe burdens" on speech . . . [must] be narrowly tailored to serve a compelling state interest' " 525 U.S. at 192 n.12. *Meyer* applied "exacting scrutiny," because "the circulation of an initiative petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.' " 486 U.S. at 420, 421-22. The prohibition on paid petition circulators was unconstitutional because "the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns." *Id.* at 426.

specific legislative proposals on the election ballot.[7] Review by this Court of the incorrect decision below is required in order to afford American citizens living in Puerto Rico[8] the basic constitutional right to advance their political goals through the formation and development of new political parties, a right that "means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes." *Williams v. Rhodes*, 393 U.S. 23, 31 (1968).[9]

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[7] Unlike the right to create and develop new political parties, which is constitutionally guaranteed, Norman v. Reed, 502 U.S. 279, 288 (1992); Williams v. Rhodes, 393 U.S. 23, 31 (1968), citizens have no affirmative right under the United States Constitution to propose or adopt state or federal legislation through voter initiative. *See* Meyer v. Grant, *supra*, 486 U.S. at 424.

[8] "It is not disputed that the fundamental protections of the United States Constitution extend to the inhabitants of Puerto Rico. In particular, we have held that Puerto Rico is subject to the constitutional guarantees of due process and equal protection of the laws. We thus think it is clear that the voting rights of Puerto Rico citizens are constitutionally protected to the same extent as those of all other citizens of the United States." Rivera-Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7-8 (1982) (citations omitted) (footnote omitted).

[9] *See also* Norman v. Reed, 502 U.S. 279, 288 (1992): "For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties. The right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation, and we have accordingly required any severe restriction to be narrowly drawn to advance a state interest of compelling importance." (citations and footnote omitted).

The Court has, at times, based its ballot-access decisions on equal protection, rather than First Amendment principles. *See*

I. PUERTO RICO'S REQUIREMENT THAT LAWYERS SEPARATELY NOTARIZE EACH PARTY-REGISTRATION PETITION SEVERELY BURDENS RIGHTS OF FREE EXPRESSION AND ASSOCIATION AND EFFECTIVE VOTING RIGHTS; THIS SEVERE BURDEN CALLS FOR STRICT JUDICIAL SCRUTINY.

The severely burdensome character of Puerto Rico's restriction on the ability of citizens effectively to circulate petitions seeking access to the general election ballot for a new political party is not in serious dispute and was explicitly recognized by the courts below. Puerto Rico requires each voter's party registration petition to be notarized by someone "duly admitted to the practice of notary." 16 L.P.R.A. § 3101(3). Such a notarization requirement might raise no serious constitutional concerns in much of the nation.[10] Puerto Rico, however, requires that notaries must not only be certified as notaries, but that they must in addition be "attorneys . . . who are members of the Puerto Rico Bar Association" 4 L.P.R.A. § 2011.[11] As a result, the

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Anderson v. Celebrezze, 460 U.S. 780, 786-87 n.7 (1983): "In this case, we base our conclusions directly on the First and Fourteenth Amendments, and do not engage in a separate Equal Protection Clause analysis. We rely, however, on the analysis in a number of our prior election cases resting on the Equal Protection Clause of the Fourteenth Amendment."

[10] *See, e.g.*, American Party of Texas v. White, 415 U.S. 767, 787 (1974), where a Texas notarization requirement for signatures on ballot-access petitions by minority parties was upheld. This Court noted that the parties in that case made "little or no effort to demonstrate [the requirement's] impractibility or that it is unusually burdensome. The District Court determined that it was not, indicating that one of the plaintiff political parties had conceded as much."

[11] In civil law countries, "notary" "has a very different connotation than the term 'notary public' does in the United States. . . . Latin notaries, in contrast to American notaries

pool of Puerto Rican residents qualified to circulate a new party's registration petitions is restricted to the 6,700 practicing lawyer-notaries in Puerto Rico (out of more than 2,300,000 registered voters) who have been "authorized to practice as notaries by the Supreme Court of Puerto Rico," 4 L.P.R.A. § 2011. For their registration petition work, which includes the preparation of four official reports for each endorsement, these lawyer-notaries are compensated by the Commonwealth's Elections Commission at the rate of "one (1) dollar for each valid, notarized petition." 16 L.P.R.A. § 3101(3).

In *Meyer*, the Court held that forbidding payment to petition circulators, thus limiting circulators to unpaid volunteers, "restricts political expression in two ways: First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion." 486 U.S. at 422-23. In *Buckley*, the Court

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public, are state-appointed, private legal professionals who, whenever asked, are required to: (1) carry out nonadvocacy counseling; (2) give private transactions proper legal form and authenticate such transactions in an enforceable public document; and (3) maintain a permanent record of these transactions, for which they must provide certified copies, if requested. . . . The education and admission requirements for becoming a Latin notary are far more stringent than those for admission to the bar in the United States." Cisneros, *Notorius Notaries – How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 Ariz. St. L.J. 287, 288, 294-95, 297 (2000). *See also*, Merryman, THE CIVIL LAW TRADITION, 113-15 (1969): "[A]ny similarity between the civil-law notary and the notary public in common-law countries is only superficial. . . . Our notary public is a person of very slight importance. The civil-law notary is a person of considerable importance." *See generally*, Malavet, *Counsel for the Situation: The Latin Notary, a Historical and Comparative Model*, 19 Hastings Int'l & Comp. L. Rev. 389 (1996).

observed that Colorado's requirement that petition circulators be registered voters as well as state residents "drastically reduces the number of persons, both volunteer and paid, available to circulate petitions," and thus "significantly inhibit[s] communication with voters about proposed political change." 525 U.S. at 192-93. In both cases, the burden thus imposed on petition-circulating called for strict or "exacting" judicial scrutiny.[12]

This case, like *Meyer* and *Buckley*, involves a burden on basic free expression rights. Puerto Rico's lawyer-notary requirement prevents petitioner from using its non-lawyer members and other volunteers to communicate with voters about proposed political change through the process of soliciting and obtaining signatures on party-registration petitions. The requirement thus "limits the number of voices" able to convey petitioner's message and "the size of the audience they can seek." *Meyer*, 486 U.S. at 422-23. By drastically reducing "the number of persons . . . available to circulate petitions" it "significantly inhibit[s] communication with voters about projected political change." *Buckley*, 525 U.S. at 192-93.

In its opinion on reconsideration, the Supreme Court of Puerto Rico sought to distinguish *Buckley* and *Meyer* on the ground that, unlike the statutes in those cases, Puerto Rico's lawyer-notarization requirement does not "restrict the freedom of speech of the members of the Civil Action Party" (App. 14d). The court reasoned that non-lawyer Party members "have complete liberty to make the expressions they believe necessary," they merely had either to "have a notary go with them in endorsement collection campaigns," or "send or take the voters to the offices of the notaries" (App. 14d, 15d n.7).

The same options were present in both *Buckley* and *Meyer*, where the statutes restricted only the "circulation" of petitions. Advocates of initiative propositions who could not circulate petitions remained free in those cases to try to

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[12] *See* note 6 *supra*.

convince voters to sign petitions circulated by others who were authorized to be circulators. The Court in those cases recognized, however, that speech designed to persuade voters to sign a political petition is severely burdened when the speaker may only speak about, but not circulate, petitions. The lawyer-notarization requirement means that in Puerto Rico only lawyers may effectively circulate party registration petitions.

In addition to free expression, Puerto Rico's requirement also burdens rights not involved in either *Buckley* or *Meyer* – the associational "right of citizens to create and develop new political parties,"[13] as well as the right to vote, a right that is " 'heavily burdened' if that vote may be cast only for major-party candidates at a time when other parties or other candidates are 'clamoring for a place on the ballot.' " *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983), quoting from *Williams v. Rhodes, supra*, 393 U.S. at 31.

The limitation on the number of voices able to carry the Civil Action Party's message to voters through the petition process in this case is, moreover, many times more drastic than in either *Meyer* or *Buckley*. Petitioner is completely forbidden by law from following the traditional Puerto Rican political practice of using *ad hoc* notaries – citizen volunteer campaign workers authorized by the Commonwealth's Elections Commission to gather and notarize election petition signatures on behalf of parties or candidates.[14] It must, instead, attempt to hire practicing attorneys who have been certified as notaries, presumably at their usual hourly rates, to do the time-consuming, tiresome and completely non-

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[13] Norman v. Reed, *supra*, 502 U.S. at 288.

[14] "Hard work and sacrifice by dedicated volunteers are the life blood of any political organization." American Party of Texas v. White, 415 U.S. at 787.

lawyer-like work of political canvassing or soliciting for a cause with which those attorneys may have little or no sympathy. These attorneys, moreover, may be strongly disinclined to work for a new party if its program is strongly opposed by either or both of the two political parties that have shared dominant political power in Puerto Rico for more than 50 years. The burden imposed by Puerto Rico's requirement is especially heavy in rural areas, where the nearest lawyer-notary may be many miles away.

In its complaint in this case, the Party alleged that it "only has two attorneys to collect and swear the petitions for registration," that "these attorneys can only work a few hours on some weekends or holidays" and that, as a result, the Party "is unable to collect endorsements," making access to the general election ballot "impossible." (App. 5e, 14e-15e). In affirming the judgment dismissing the Party's complaint, the Supreme Court of Puerto Rico acknowledged the burden imposed on the Party through the attorney-notarization requirement, stating that "[t]here is no doubt" that the requirement makes ballot access "more difficult." (App. 26a). (In fact, no new party has been able to achieve ballot access in Puerto Rico since 1984.) The superior court had, for its part, found the challenged requirement to be "substantially onerous." (App. 23c). The Supreme Court nevertheless failed to require the Commonwealth to demonstrate that the lawyer-notarization requirement was narrowly tailored to serve a compelling government interest because access to the ballot had not been made completely "impossible." This failure was clear constitutional error, calling for this Court's review.

Review is also warranted in order to resolve the existing conflict regarding the applicable constitutional standard between the decision of the Supreme Court of Puerto Rico below and the decision of the Court of Appeals for the First Circuit in the parallel federal litigation. See, e.g., *Hagen v. Utah*, 510 U.S. 399, 409 (1997). *Baldwin v. Alabama*, 472 U.S. 372, 374 (1985). Unlike the Supreme Court of Puerto Rico, the

First Circuit correctly applied strict scrutiny to the Party's challenge to the lawyer-notary requirement, holding that, "if . . . appellants can prove that notarization is prohibitively expensive or otherwise difficult to achieve (as the complaint avers) then the Commission will have to show that the notarization requirement is narrowly drawn to advance a compelling governmental interest." *Cruz*, 204 F.3d at 22. This conflict in constitutional standards requires resolution. If certiorari were to be denied, new political parties seeking ballot access in Puerto Rico would be subject to significantly different levels of constitutional protection, depending upon whether ballot-access restrictions were challenged before Commonwealth or federal courts.

II. THE LAWYER-NOTARIZATION REQUIREMENT IS NOT NARROWLY TAILORED TO SERVE ANY OF PUERTO RICO'S LEGITIMATE INTERESTS.

If the correct standard is applied, the unconstitutionality of the lawyer-notarization requirement is apparent. Puerto Rico's rule that only lawyers may notarize new-party ballot-access petitions is unquestionably *not* narrowly tailored to serve any of the Commonwealth's legitimate regulatory interests.

To begin with, it would be quite remarkable if conditions in Puerto Rico were so different from those in the remainder of the United States that it, alone among United States jurisdictions, would find it necessary to exclude everyone but practicing lawyers from the function of attesting to the authenticity of signatures on ballot-access petitions.[15] It

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[15] We have been unable to find any other United States jurisdiction that requires each signature on an electoral petition to be notarized by a lawyer. Indeed, although Texas, Utah, and Indiana once required each signature to be notarized by an ordinary notary-public, *see* American Party of Texas v. White, *supra*, at 787; Einhorn, *Non-initiative Petition Requirements for Third Party and Independent Candidate Ballot Access*, 11 Suff. U. L. Rev. 974, 1019, 1023 (1977), none of those States appears to have

strains belief to imagine that *only* members of the bar, alone among all American citizens of Puerto Rico, can be trusted with the task of checking drivers licenses, passports or electoral IDs.[16] Moreover, as Judge Negrón-Garcia observed in his opinion dissenting from the Puerto Rico Supreme Court's denial of reconsideration below, there is something extremely disquieting (Judge Negrón-Garcia's characterization was "elitist and irritating") about giving to this single professional group, "the exclusive prerogative of giving efficacy and legal virtuality to the rights of speech, association and suffrage of the voters." (App. 21d).

Other provisions of Puerto Rican law, as well as long-standing Commonwealth practice, confirm that there is, in fact, no good reason to permit only lawyers to perform the notarial function for ballot-access petitions. Section 3161 of Puerto Rico's election code, 16 L.P.R.A § 3161, provides that petitions of candidates to appear on the ballot in the party primaries of the three established parties "may be sworn to before the officials authorized by law to take oaths [i.e. lawyer-notaries] *as well as before any elector authorized by the [Elections] Commission to perform such duty, at the request of each candidate for primaries.*" (emphasis added) This so-called *ad hoc* notary procedure, through which non-lawyer campaign workers are certified by the Elections Commission to perform the notarial function, is legally available and widely used in Puerto Rico as the means by which signatures are validated in support of party primary candidates. It is also

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retained even that requirement. Some States require the petition *circulator* to submit a statement notarized by an ordinary (non-lawyer) notary public.

[16] Nor does excluding everyone but lawyers from the petition-notarization function guarantee either carefulness or honesty. *See, e.g., In re* Landing; y Aulet, 107 D.P.R. 103 (1978) (two members of Puerto Rican bar suspended from practice of law for irregularities in petition authentication including notarization of forged signatures).

used by independent candidates seeking access to the general election ballot, and by new political parties seeking local party registration. It was, moreover, also authorized for use by political groups seeking public funding, as well as ballot access, in connection with the Commonwealth's 1998 plebiscite election concerning its future political relationship with the United States. No reason appears why the Commonwealth Elections Commission, composed of representatives of the established parties, cannot safely be authorized to designate appropriate non-lawyers as *ad hoc* notaries to perform the notarial function in Commonwealth-wide party registration efforts as well. Those notaries are fully subject to Puerto Rico's penal code, which imposes serious criminal penalties on persons who prepare or present false writings in official proceedings. See 33 L.P.R.A. §§ 4437 and 4438. See *Buckley*, 525 U.S. at 204 (stating that criminal penalties are "less problematic" than broader restrictions for deterring fraud and diminishing corruption in connection with ballot-initiative petitions); *Meyer*, 486 U.S. at 427 (stating that criminal penalties are "adequate to the task" of minimizing fraud and corruption in the circulation of initiative petitions).

The role of the Commonwealth Elections Commission in validating party-registration petitions is additional confirmation of the overbreadth of the exclusion of all non-lawyers from the notarization function. The Commission's rules (*supra* at pp. 4-5) require it to deny any registration petition if the person signing it is not a registered voter, if that person signed a registration petition for another party during the preceding two years, if the "signature of the petitioner is incompatible with the one that appears in the petition for inscription," or if there are discrepancies in the name of the petitioner's father or mother or in the petitioner's age (all of which must appear on the voter's petition). The Commission's review of submitted petitions must thus include a comparison of the signature of, and data regarding, the petition signer with the information already on file with the Commission through the petition signer's registration as a voter. This review serves as a back-up for the functions that

are also served by notarization – verification of the petitioner's identity and his or her status as a registered voter entitled to sign a party-registration petition. If the Commission's abilities to limit the designation of *ad hoc* notaries to trustworthy individuals and to check the petitions submitted by those notaries for validity is, for some reason, believed to be inadequate to safeguard against the submission of fraudulent or frivolous petitions, narrow tailoring requires strengthening of the Commission's procedures, not the wholesale exclusion of all of Puerto Ricans who are not practicing lawyers from participation in the petition-gathering process.

III. PETITIONER'S SUPPOSED LACK OF "DILIGENCE" DOES NOT DISQUALIFY IT FROM OBTAINING RELIEF.

In denying petitioner's motion for reconsideration, the Supreme Court of Puerto Rico appeared to rely in part on the supposed lack of "diligence" of the Party in seeking to obtain the required number of petition signatures, despite the lawyer-notarization requirement. The court discerned a "tendency" on petitioner's part "to depend exclusively in litigation" as a means of obtaining party registration (App. 5d). To the extent that the lower court took this factor into account in its decision, it was in error. Individuals and organizations faced with unconstitutional burdens on their constitutional rights are entitled to seek judicial removal of those burdens without first having to expend limited resources in an effort to comply with the unconstitutional obstacles. See, e.g., *Meyer*, 486 U.S. at 417. The Party in this case took all the steps needed for registration except the step burdened by the unconstitutional lawyer-notary requirement. As the superior court held (App. 6c-8c), it clearly had standing to bring this challenge to the lawyer-notarization requirement.

Nor would a ruling that the challenged burdens are unconstitutional constitute achievement of the Party's registration goal "exclusively" through litigation, as the Supreme

Court of Puerto Rico feared. The Party does not seek a judgment that it is a registered party entitled to ballot access and public funding. It understands that in order to achieve registered status, it must obtain the support of nearly 100,000 registered Commonwealth voters. It has instituted litigation in order to enable it to solicit support from those voters without having to do so exclusively through lawyers – to be permitted to utilize the *ad hoc* notary procedures applicable to all other ballot-access matters.

IV. PETITIONER IS ENTITLED TO A DECLARATION THAT THE LAWYER-NOTARIZATION REQUIREMENT IS UNCONSTITUTIONAL.

The failure of the courts below to apply the correct constitutional standard in determining whether to dismiss petitioner's complaint would ordinarily call for this Court to vacate the order of dismissal, giving petitioner the opportunity to prove the severity of the burden imposed on it by the challenged requirements and, if that burden is established, giving the Commonwealth the opportunity to prove that the burden is narrowly tailored to serve compelling governmental interests. There seems no dispute, however, that a severe burden on fundamental rights exists in this case, and it also seems clear that the designation of lawyers – and only lawyers – as the only individuals legally capable of notarizing new-party registration petitions in Puerto Rico cannot possibly be defended as a narrowly tailored method for insuring petition integrity. If the petition for a writ of certiorari is granted, petitioner therefore intends to suggest to the Court the propriety of its declaring the lawyer-notarization requirement unconstitutional without the necessity for further factual or legal exploration of that issue in the courts below.[17]

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[17] Although it is now too late for petitioner to collect the required number of signatures to appear on the November, 2000, ballot, the action is not moot. *See, e.g.*, Meyer v. Grant, 486 U.S. at 417 n.2; Norman v. Reed, 502 U.S. at 287-88. Petitioner

CONCLUSION

The decision of the Supreme Court of Puerto Rico, upholding the Commonwealth's rule that only lawyers can notarize voter petitions in support of new political parties seeking access to the general election ballot, severely and unnecessarily burdens the American citizens of Puerto Rico in exercising the most basic of rights in a free society – the right to organize, join and vote for a political party of their choice. The petition for a writ of certiorari should be granted to enable the Court to review this harmful and unconstitutional decision.

Respectfully submitted.

Of Counsel
PAUL BENDER
College of Law
Arizona State University
Tempe, AZ 85287-7906
(480) 965-2556

NELSON ROSARIO-RODRIGUEZ
Counsel of Record
P.O. Box 23069
San Juan, PR 00931-3069
(787) 764-0429

NEIL D. O'TOOLE
226 West 12th Ave.
Denver, CO 80204-3625
(303) 595-4777

Counsel for Petitioner

July, 2000

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would like to ensure its place on the November, 2004, general election ballot by beginning to solicit petitions of endorsement through *ad hoc* notaries on the earliest possible date.

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IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil Petitioner v. Commonwealth of Puerto Rico, et al. Appellees	)	No. AC-1999-20 Certiorari

Opinion of the Court issued by Associate Judge Hon. Hernández Denton

San Juan, Puerto Rico, February 25, 2000.

The Partido Acción Civil (Civil Action Party) requests the reversal of a judgement of the Appeals Circuit Court which upheld the constitutionality of Arts. 3.001(3) and 3.002 of the Electoral Act, Public Law No. 4 of December 1977, as amended. 16 L.P.R.A. ss. 3101 (3) and 3102.

After considering said provisions, none incur in constitutional defects whatsoever, we confirm.

I

On October 6, 1998, the Partido Acción Civil, a political group interested in becoming a party by petition to participate in the elections of the year 2000, presented a recourse of declaratory judgement and preliminary and permanent injunction before the Court of First Instance, challenging the constitutionality of Arts. 3.001 (3) and

3.002 of the Electoral Act, Public Law No. 4 of December 4, 1977, as amended, 16 L.P.R.A ss. 3103 (3) and 3102. Said provisions require that the petitions to register a party by petition be sworn before a notary public and presented before the State Electorate Commission (Herein the C.E.E.) within seven days after the oath in question has been taken. It was also requested that the C.E.E. adopt for the registration of Partido Acción Civil as a party by petition the same requirements in place for candidates interested in the internal primaries of already registered political parties.[1]

The Court of First Instance denied the complaint filed. It upheld the constitutionality of the requirements imposed by articles 3.001(3) and 3.002 of the Electoral Act, considering the differences between the requirements established by law for the registration of a political party by petition and for the primary activities of an already registered party, which answer to valid and legitimate interests of the State. It concluded that for its registration as a political party by petition, the Partido Acción Civil would not be able to require of the C.E.E. treatment similar to that of already registered parties.

Not being satisfied with said determination, the Partido Acción Civil went before the Appeals Court. Having submitted their appeal, the Partido Acción Civil presented a motion of aid of jurisdiction requesting the

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[1] Art. 4.011 of the Electoral Act, 16 L.P.R.A. sec 3161, provides that such petitions be sworn to before officers authorized under the law to take oaths and before any elector authorized by the C.E.E. to perform said function at the petition of each candidate in the primaries.

authorization for the collection of endorsements using *ad hoc* notaries designated by the C.E.E. and an order so that the C.E.E. could receive all the endorsements, even those presented after the seven-day period established under the law. The Appeals Court confirmed the ruling appealed.

In due time, the Partido Acción Civil presented before us an appeals recourse, accompanied by aid of jurisdiction motion so that we would nullify Article 3. 001 (3) of the Electoral Act regarding the requirement that the registration endorsements be sworn to before a Notary Public. We accept the appeal as a *certiorari*, but we deny the motion in aid of jurisdiction.[2]

In summary, the Partido Acción Civil alleges that the ruling courts erred: (1) in concluding that the provisions challenged the Electoral Act did not violate the rights to association, expression and vote effective under the doctrine of access to the ballot; (2) upon summarily dismissing the complaint; (3) upon dismissing the complaint without holding an evidentiary hearing, given that this allegedly violated their constitutional rights by not having provided due process under the law of procedure; (4) upon concluding that there is no violation of constitutional provisions regarding the Equal Protection of the Laws with the requirement that attorneys notarize the endorsements of the parties by petition be attorneys.

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[2] After issuing the *certiorari*, the Partido Acción Civil present three motions in aid of jurisdiction which were denied. Resolutions of the Puerto Rico Supreme Court of August 4, 1999, October 27, 1999 and January 4, 2000.

Having examined the original records, as well as extensive pleas and briefs from all the parties, we resolve.

II

The correct adjudication of the facts before us require that we examine and harmonize the important role of the political parties in our jurisdiction, with the obligation of the Legislative Assembly to safeguarding the rights of the electorate in exercising their vote in the context of elections that are fair, and free of fraud, confusion and chaos.

The Constitution of the Commonwealth of Puerto Rico expressly recognizes the importance of political parties within our governmental organization with the establishment of the formula guarantee of minority representation in the Legislature. Art. III, Sec. 7, Const. E.L.A.; *Silva v. Hernández Agosto*, 118 D.P.R. 45 (1986). In exercising our adjudicative function, this court has recognized that the political parties have assumed an ever more extensive and important role in the everyday functioning of modern states, and that there is a correlation between the party system and constitutional order. *Fuster v. Busó*, 102 D.P.R. 327 (1974).

The existence of political patties in our jurisdictions is eminently tied to the right of each citizen to participate in the electoral process, a basic element to our democratic system, which arises from the right to vote, expressly established in our Bill of Rights. Art. II, Sec. 2, Const. E.L.A. Under our constitutional law, the right to vote does not only give the electorate the right to vote in elections, but also covers the right to have included in the

polls options which reflect contemporary political tendencies of the voter. *Ortiz v. Barreto*, 110 D.P.R. 84 (1980). The right to vote, in its dimension of political participation, includes the right to form groups to participate in the electoral process.

Although the fundamental character of the right to vote in a given manner, and the right to form groups for political purposes through an electoral poll is undoubted, it is not an absolute right. *Ramirez de Ferrer v. Mari Bras*, res. November 18, 1997, res. Of November 18, 1997, 144 D.P.R.___ (1997), concurring opinion of Chief Judge Andreu García; For illustration purposes see *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986); *Burdick v. Takushi*, 504 U.S. ___, 119 L.Ed.2d 245 (1992). It is up to the Legislative Assembly, in its exercise of the constitutional mandate under Art. VI, Sec. 4 of our Constitution which provides that "the law will determine everything concerning the electoral process and the registration of voters, as well as everything concerning political parties and candidates," to determine and regulate everything concerning the electoral process, including political parties and candidates.[sic]

The authority granted to the Legislative Assembly by Art. VI, Sec. 4, although not absolute, is broad and extensive. *P.S.P., P.P.D., P.I.P. v. Romero Barceló*, 110 D.P.R. 248 (1980). It is only in this manner that the State can fulfill its obligation to protect the purity of the electoral process. That is, the Legislative Assembly has the authority and the obligation to approve any regulation which, without unnecessarily obstructing the right to vote in all its dimensions, encourages a fair and orderly electoral process free of fraud, and is honest and wholesome. *P.S.P.*,

P.P.D., P.I.P. v. Romero Barceló, supra; P.N.P. v. Tribunal Electoral, 104 D.P.R. 741 (1976); *P.S.P v. Com. Estatal de Elecciones*, 110 D.P.R. 400 (1980). Under this power, upon regulating the access of the groups, candidates or formulas to the polls, the State is put in a position where, by its nature, has the effect of restricting and limiting the right to participate in the electoral process. For illustration purposes see, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986).

It is within this constitutional background that we must analyze the claims of the Partido Acción Civil

III

The Partido Acción Civil alleges that the court of [first] instance erred in its summary judgement by not taking into consideration all material facts not disputed by the defendant and by not granting them the opportunity to demonstrate, through the preponderance of evidence that the provisions challenged are unconstitutional in their application.

Rule 36 of the Civil Procedure, L.P.R.A. Ap. III, R. 36, regulates everything concerning summary judgements. The purpose of said mechanism is to speed up the handling of cases, allowing for judgement without the need to hold an evidentiary hearing, when the documents not in dispute attached to the request and the totality of the record, establishes that there is no controversy over the material facts, thus only requiring the application of law. *Medina v. M.S.&D. Química P.R. Inc.*, 135 D.P.R. 176 (1994); *Cuadrado v. Santiago*, 126 D.P.R. 272 (1990).

It is up to movant to demonstrate not only that there is no real substantial controversy regarding a material fact, but also that as a matter of law, judgement in its favor is appropriate. *Pilot Life Ins. v. Crespo Martínez*, 136 D.P.R. 624 (1994). The court can issue summary judgement in favor of a party in the litigation which did not request said remedy if enough basis is found in the record. *Audiovisual Language, etc v. Natal Hermanos*, res. of December 15, 1997, 144 D.P.R. ___ (1997).

We have highlighted in the past that "the fact that a party presents a motion for summary judgement is no guarantee that once a determination is made to uphold it, it is necessary to rule in favor of the party that presented it." *Consejo de Titulares del Condominio Parkside, etc. v. MGIC Financial Corporation, Inc.*, 129 D.P.R. 538 (1991). The court must analyze the facts in the most favorable manner for the party opposed and issue judgement in favor of the party assisted by law. *Colegio de Ingenieros v. A.A.A.*, 131 D.P.R. 735 (1992).

As is reflected in the record, the Partido Acción Civil filed a motion for summary judgement in which it reiterated the arguments highlighted in the complaint and enumerated the facts exposed in the complaint which allegedly were not in dispute by the codefendants. The codefendants opposed summary judgement. The court of [first] instance, based on the documents and admissions by the parties, outlined a series of material facts about which there was no real substantial controversy. It then went on to examine the applicable law and to formulate pertinent conclusions of law. It determined, in virtue of the law in effect in our jurisdiction, it was appropriate to deny the request for summary judgement presented by

the Partido Acción Civil and issue judgement denying the complaint summarily.

The Appeals Circuit Court concluded that the Court of First Instance acted correctly in making use of the summary judgement recourse. Upon evaluating said recourse, the appeals forum concluded that the alleged facts in the conflict presented by the Partido Acción Civil in appeal were intended to overturn the summary ruling, and constitute opinions and particular conclusions by the appealing party. Said conclusions and opinions, given that they are not supported by specific facts, have no evidentiary value and are insufficient to demonstrate the existence of the conclusions there. Given that they constitute nothing but speculations, they should not be considered as facts in the summary judgement process in determining if there exists a true conflict about material facts. *Corp. Presiding Bishop CJC of LDS v. Purcell,* 117 D.P.R. 714 (1986). Having considered, as the appeals court correctly determined, that the court of first instance was not obliged to consider the conclusions and opinions of the Partido Acción Civil as material facts not in controversy, we concluded that the case at hand meets the procedural and substantive requirements for a summary judgement. Therefore, the ruling forum did not overstep its authority in utilizing the summary judgement mechanism in the case at hand.

On the other hand, the Partido Acción Civil maintains that the court of first instance incurred in a violation of its due process in denying the opportunity to establish, in an evidentiary hearing, the alleged unconstitutionality of the provisions challenged. This is not right.

In the procedural aspect, the due process clause imposes on the State the obligation to guarantee any interference with the interests of liberty and of property of the individual be through a procedure which is in essence fair and equal. We previously established that the due process of the procedural law is not a rigorous mold which takes place abstractly, given that its nature is eminently circumstantial and pragmatic, not dogmatic. Each case requires a contentious evaluation of the circumstances involved. *Quiles Rodríguez v. Superintendente de la Policía*, res. November 2, 1995, 139 D.P.R.___ (1995); *Rivera Rodríguez & Co. v. Lee Stowell Taylor*, 133 D.P.R. 881 (1993); *Fac. C. Soc. Aplicads, Inc. v. C.E.S.*, 133 D.P.R. 521 (1993).

In order to have the protection offered under this right in effect, there must be an individual interest of liberty or property at stake. Once this requirement has been fulfilled, there must be a determination as to the procedure required ("What process is due"). *Rivera Santiago v. Srio de Hacienda*, 119 D.P.R. 265, 274 (1987)

In order to make such a determination, it is necessary to analyze the following factors: (1) the individual interests affected by the official action; (2) the risk that an erroneous ruling will deprive the person of the interest protected through the process used and the probable value of additional or different guarantees; and (3) the governmental interest protected by the summary action and the possibility of using alternate methods. *Vélez Ramírez v. Romero Barceló*, 112 D.P.R. 716 (1982); *Matthews v. Elridge*, 424 U.S. 319, (1986). Depending on the circumstances, diverse situations could require different types of procedures, but the general requirement always persists

in that the governmental process must be fair and impartial.

Our civil procedural order has determined that the litigants are not deprived of their rights to a fair and impartial process when complying with certain requirements, and at the request of one party, to the court is shown that it is unnecessary to hold a trial. In such an event, when there is no controversy as to the material facts, there is no need to hold an evidentiary hearing to receive or elucidate the evidence.

Our system provides for the mechanism of the Rules 10.3 (motion for judgement over the allegations) and 36 (summary judgement) of the Civil Procedure, 32 L.P.R.A. Ap. III R. 10.3 and 36, to deal with such situations.

In the case before us, the forum of first instance deemed that there was no real substantial controversy as to the material facts, and an evidentiary hearing was not required since there was nothing else to present. The Partido Acción Civil itself recognized this when it requested the mechanism of summary judgement. Given that there was no controversy as to the material facts, there was no violation of due process under the law of the Partido Acción Civil in adjudicating the appeal summarily.

IV

The Partido Acción Civil alleges that the provision of the Electoral Act that requires that it be attorneys that notarize the endorsements of the parties by petition, although it is allowed for notaries *ad hoc* to certify the

endorsements of the members of the traditional parties who aspire to become candidates for the primaries, violates the constitutional clause of Equal Protection under the Law.

Art. II, Sec. 7 of our Constitution prohibits any person in Puerto Rico from being denied equal protection under the law.[3] The guarantee of equal protection under the law does not prohibit or impede the State from establishing classifications for the adequate and efficient discharge of its functions, what it prohibits is unjustified unequal treatment. *San Miguel Lorenzana v. E.L.A.*, 134 D.P.R. 405 (1993); *Zachary International v. Tribunal Superior*, 104 D.P.R. 267 (1975); *P.S.P, P.P.D., P.I.P. v. Romero Barceló, supra; Vélez v. Srio de Justicia*, 115 D.P.R. 533 (1984); *P.R.P. v. E.L.A.*, 115 D.P.R. 631 (1984).

The equal protection clause guarantees that taking into consideration the purpose and scope of the law, individuals who find themselves in similar situations will be treated in a similar manner by the State. *Berberena v. Echegoven*, 128 D.P.R. 864 (1991); Rotunda and Nowak, *Treatise on Constitutional Law*, SS. 18.1-18.2 (1999). Before determining any sort of scrutiny to be applied given an alleged violation of the Equal Protection Clause of the Laws, the court must examine, as a starting point, if the persons excluded from the classification are equally situated as those that were included, or vice-versa. In this

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[3] Section 7 of Art. II of the Constitution of Puerto Rico establishes that "no person shall be deprived of his/her liberty [or property without due process under the law, nor shall] any person in Puerto Rico be denied equal protection under the laws."

manner, in *Calo Morales v. Cartagena Calo,* 129 D.P.R. 102 (1991), upon examination of the application of strict scrutiny under the clause of Equal Protection under the Laws, in those situations where the classification challenged is inherently suspect, we clarify: "Of course, the application of this analysis begins with the premise that the law is providing unequal treatment to persons similarly situated."[4] Id. Page 133

Upon considering if two persons are equally situated, for purposes of the Clause of Equal Protection under the Laws, we must examine what is the purpose of the statute that is challenged. Having examined the purpose of the statute, there must be a determination as to whether the classification established by the Legislative assembly in including some persons and excluding others, is reasonable. If in the exercise of distinguishing between some and other persons, the state deduces, in virtue of the objective that it follows, legitimate reasons that justify the classification, there is no violation of the constitutional guarantee of Equal Protection under the Laws. Rotunda and Nowak, *supra* sec. 18.2. The prohibition of this clause does not imply the exclusion of any differentiation between the persons, if said differentiation has an objective and rational justification. For illustration purposes see, *Katzenbach v. Morgan,* 384 U.S. 641 (1966); *Railway Express Agency Inc. v. New York,* 336 U.S. 106, (1949).

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[4] See also R. Serrano Geyls, *Derecho Constitucional de Estados Unidos y Puerto Rico,* 1078 (1988): "The Constitution should recognize equal rights to citizens when they are equal, and unequal rights when they are unequal."

V

We must examine the motive behind the Legislative Assembly establishing different requirements for the registration of political groups as parties by petition and those established for the candidates for primaries in already established political parties. There is no question that both types of requirements, although different, in essence seek to protect the important interest of the integrity of the political process from frivolous and fraudulent political candidacies, at the same time insuring that the electoral process be efficient and free of confusion.

However, differing from the requirement of *ad hoc* notaries for the oaths in the registration petitions of the candidates to primaries, the legislative requirement of intervention by a notary public for the sworn registration petitions of the parties by petition, answers more to the need to establish a registration mechanism to, under the presumption of the public faith in the notary system, guarantee the highest degree of purity to the process. *P.S.P., P.P.D y P.I.P. v. Romero Barceló, supra.*

In making a distinction between the requirement for the registration of political groups in the process of registration as parties by petition, from those required of the candidates from already established political parties, the Legislative Assembly answers to reasonable and legitimate interests. The differences that exist between political associations in the process of registration and candidates to the primaries from already established political parties, allow and justify different treatment regarding the requirements of sworn registration petitions for each one.

This dichotomy in the regulation exists for a reason. We explain as follows.

The difference between political parties and political groups in the process of registration has been repeatedly recognized by our jurisprudence. It is not until the political group has satisfied all requirements under the electoral laws for its registration that it is deserving of equal treatment as a traditional party. *P.R.P. V. E.L.A.*, 115 D.P.R. 631 (1981).[5]

This Court has recognized the preeminence of the political parties as vehicles that facilitate the organization and effectiveness of collective participation by individuals. *Sánchez y Colón v. E.L.A. II*, 134 D.P.R. 503 (1993). In our democratic system, political parties are indispensable and constitute a vehicle of expression to peacefully channel the different political tendencies and interests of the various areas of national opinion. *P.R.P. v. E.L.A., supra.* It is in virtue of its *quasi* public character that they are granted a subsidy through the electoral fund to finance its activities. *P.S.P. v. E.L.A.*, 107 *supra.* D.P.R. 590 (1978).

Political parties should comply with rigorous electoral norms and operate under a scheme designed so that the state can supervise and control its political, its administrative and financial activities. Differing from this, political groups that are not political parties are not subject to

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[5] In particular, federal jurisprudence has established that, as far as registration requirements imposed by the state, political groups that aspire to become independent candidates are not similarly situated as established parties. For illustration purposes, see *Clements v. Flashings*, 457 U.S. 957, (1982).

this sort of scrutiny, and for this reason cannot be favored with the granting of public funds. *P.S.P. v. E.L.A., supra.*

For its part, the primary process for candidacy is one through which the voters of the political parties nominate candidates to elected public positions. Art. 1.003 (47) of the Electoral Act, 16. L.P.R.A. 3003 (47). It is process that is intrinsically particular to the established political parties, which through their history, have already demonstrated electoral support.

The hopefuls and candidates to elected positions, upon being certified through the endorsements, do not receive support whatsoever from public funds. The certification only gives them the right to a ballot next to other hopefuls, and are then submitted to public scrutiny, first during the primaries and later in general elections.

Differing from candidates in primaries from parties that have already demonstrated having the support of the voters, political groups that wish to register as parties must be able to demonstrate that they have the support of enough voter backing.[6] The State can, validly, establish

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[6] The concern of the Legislative Assembly with insuring that the electoral process is open to *bona fide* political organizations has been consistent. The report of the Government Commission of the Senate of November 3, 1978, to the P. of the H. 896, precursor to Public Law No. 4 of November 15, 1978, which amended Article 3.001 of the Electoral Act to add the requirement that all petitions for registration be sworn to before a notary public so states:

> "A political party that was able to register as a political party by petition to participate in the general elections of 1976 does not need the strict guarantee

requirements to require a preliminary demonstration of support by the electorate. These requirements can be formulated with conditions to appear on the electoral ballot. For illustration purposes see, *Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

The interest of the State in insuring that it is dealing with a *bona fide* political group with the backing of the electorate is more important still if we take into consideration that once a party is registered, political groups participate in the Electoral Fund, they have the right to an Electoral Commissioner and to have a full time representative in the Boards of Permanent Registration in charge of the public treasury. Given this reality, it is justified for the State to establish a stricter evaluation and certification process.

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that its petitions for registration to participate in the general elections of 1980 be sworn to before a Notary Public, sufficing, so that the law is effectively complied with, that its petitions be sworn to before authorized electors [sic] by the State Commission of Elections for that purpose. The effort of once again registering a political party in the period after general elections in which said party lost its judicial personality as such, is demonstrative of it being a *bona fide* political group.

Nevertheless, we understand that the requirement that the petitions be sworn to before notary publics should be maintained in the case of patties which are in the process of registration for the first time, safeguarding in this manner the purity of the process and guaranteeing that they are *bona fide* political groups."

After examining the report filed by the Government Commission of the House of Representatives to the P. of the H. 896, precursor to Public Law No. 4 of November 15, 1978, which amended Art. 3.001 of the Electoral Act and added the requirement that the petitions for registration of parties by petition be sworn to before a notary public, demonstrate the concern of the Legislative Assembly regarding the participation in the Electoral Fund:

> "A point of great importance that should be considered in approving this Bill, is the provision under the current Electoral Act referring to the electoral Fund. Given that such fund is part of the public treasury, participation in it must be safeguarded so that it is not handed to parties by petition that were fraudulently registered, and to the contrary, so that any party that has the endorsement of a truly interested sector which was registered legally as a new party will participate in it." Report of the Government Commission of the House of October 24, 1978.

Given the previously stated, we conclude that political groups that aspire to become parties by petition are not in equal standing with the candidates of established political parties. There is a legitimate and objective justification for the State to establish more rigorous requirements for the petitions for registration of political groups that aspire to become political parties by petition, than those requirements established for the candidates in primaries.

The Legislative Assembly has a legitimate interest in requiring a *prima facie* demonstration of electoral support from political groups that file petitions for registration, and to establish a mechanism to guarantee the reliability

of said petitions. In our system this mechanism is the swearing of the petitions before a notary public, and the public faith that said intervention by such an officer affords it.

The Partido Acción Civil also alleges that during the plebiscite of December 13, 1998, Pro E.L.A. was allowed to swear in the endorsements required to have access to the plebiscite ballot and to campaign with public funds as a representative of free association, before officers authorized by law to take oaths and by *ad hoc* notaries that were authorized by the C.E.E.

About said allegation, suffice it to say that the requirements for official representation in the plebiscite options, which were requirements satisfied by Pro E.L.A., were established through special law, Art. 10 of Public Law no. 249 of August 17, 1998, known as the Plebiscite Act of 1998.[7] The purpose of said law was to make viable an elections process that answered to the controversy of the political condition of the inhabitants of Puerto Rico concerning the United States. Art. 1 Plebiscite Act of 1998. It was in response to the special nature of the plebiscite process that the Legislative Assembly set the process to be followed.

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[7] Art. 6 of the Plebiscite Act established that the provisions of the Electoral Act would be applicable to the plebiscite process in everything for which the special plebiscite act had not provided a different regime. This is congruent with Art. 7.0001 of the Electoral Act, 31 L.P.R.A. sec. 3301, which states that the celebration of a referendum or plebiscite would be ruled by special law approved for that purpose.

In the regular elections process, the parties which have gained access to the ballot, present to the electorate their candidates to guide the destiny of Puerto Rico. Said candidates, if elected, would make up our government for the next four years. The State has a legitimate interest in that those candidates legitimately represent the interests of the sector of the population which gave them its trust. For this reason, it is necessary to establish strict requirements that guarantee the process has been free of fraud and corruption. It would be a grave situation if after certain candidates have been elected, and after having them having taken their oath, it was discovered that the party that sponsored them had been registered fraudulently.

Differing from this, the plebiscite process is not one to elect candidates or to establish the government of Puerto Rico. By its nature, it seeks to grant access to the diverse ideologies existing about the political future of Puerto Rico.

We should point out that the Plebiscite Act of 1998, like the Electoral Act, treated groups requesting to represent one of the status options, differently from established parties. Art. 10 of the Plebiscite Act of 1998 provided for official participation of the political parties established to be insured through simple written notification by its ruling body to the C.E.E. within a term established by law, by its directive organisms.

The opportunity to participate by other political groups was regulated specifically. In the first place, it was provided that political organizations could request that they be certified to officially represent an option, as long

as said option was not already represented by a political party. Furthermore, in order to obtain said certification, the group would need to certify before the C.E.E. that it had a judicial personality at the time the Plebiscite Act was passed and a public and recognized history in defense of the option it expected to represent; to file before the C.E.E. a number of endorsement petitions equivalent to not less than three percent (3%) of the electorate that voted in the 1993 Plebiscite for the status option that receives the least votes in that consultation; said petitions could be sworn by officers authorized by law to take oaths and by those so authorized by the C.E.E. Public Law No. 249 of November 17, 1998, Art. 10(3).

That is, the Legislative Assembly opted for different requirements for groups interested in participating in the 1998 plebiscite in representation of one of the options not represented by a political party and different requirements for already established political parties, from those required from parties by petition for the general elections.

The argument of the Partido Acción Civil rests on the fact that Pro ELA, as a political group that represented the option of free association was certified to participate in the plebiscite through oaths taken by *ad hoc* notaries, and at the same time participated in the special funds assigned for the plebiscite. Regarding this argument, we must point out the differences between the participation of a duly qualified political group to defend a status option in the plebiscite funds and the participation of the registered political parties, whether they be the main ones or by petition, in the Electoral Fund.

The Electoral Fund is a permanent fund which guarantees to all political parties, the main ones and those by petition, $300,000.00 per non-election year and $600,000.00 on election years. Electoral Act, Art. 3.023, 16 L.P.R.A. sec. 3116. The special funds assigned to the parties and qualified political groups that participated in the 1998 Plebiscite consisted in a one time and short term allocation of $2,000,000.00 to be distributed in equal parts among all the political parties and certified political groups. Art. 20 of the 1998 Plebiscite Act, *supra*.

Given what was previously stated regarding the nature of the plebiscite process and the character of the public funds assigned by said process, we conclude that political groups that aspire to become parties by petition are not situated equally to the political groups in a plebiscite process. There is a legitimate and objective justification for the State to establish more rigorous requirements for the registration petitions of the political groups that aspire to become political parties by petition. Once recognized as parties by petition, said groups have the right to present candidates to elected positions in general elections, and substantial yearly participation in the Electoral Fund.

VI

Lastly, we must examine the allegation by the Partido Acción Civil that the provisions challenged violate the right to association, expression and to effective vote under the doctrine of free access to the electoral ballot, and that the legislation affects its right to be a candidate to public office.

In the first place, we must point out that although the right to vote and to association are fundamental in character, and their exercise entails the right to vote in a given manner, neither the right to be a candidate to elected office, nor appearing as an association in the electoral ballot, are fundamental rights. *García v. Luciano,* 115 D.P.R. 628, (1984), *P.P.D. v. Planadeball Pöggy,* 121 D.P.R. 570 (1988). For illustration purposes, see also, *Clements v. Flashing,* 457 U.S. 957, 963 (1982), *Munro v. Socialist Workers Party,* 479 U.S. 189 (1986); *Burdick v. Takushi,* 504 U.S. ___, 119 L. Ed.2d 245 (1992).

Given the interest of the state in avoiding electoral chaos and confusion, states have the authority to regulate the requirements necessary for access to the electoral ballot. However, such power is not absolute. The regulation mechanism utilized by the state cannot have the purpose of excluding certain types of candidates and parties from the electoral process. That is, the provisions about access to the electoral ballot cannot restrict in an unnecessary or discriminatory manner the opportunities of a candidate or of a political group to have access to the voters, nor can it operate to exclude certain types of candidates or parties from the electoral process. For illustration purposes see *Lubin v. Panish,* 415 U.S. 709, 716 (1974)

In *Sánchez v. Colón v. E.L.A. I,* 134 D.P.R. 445, 450 (1993), we examined the delicate balance between the fundamental right to suffrage and the interest of the State in regulating its exercise, and we came to the conclusion that the analysis process is to study the particular circumstances of each case. There is no rigid and invariable criteria that must be used in this type of judicial analysis.

Federal jurisprudence related to the doctrine of access to the ballot has elaborated the scrutiny to be applied when it is alleged that any provision by the State restricts a candidate, or an association, to access to the electoral ballot. Said jurisprudence was the object of an analysis in *Sanchéz v. Colón v. E.L.A. II*, 134 D.P.R. 503 (1993) (Assenting Opinion by Associate Judge Hon. Andréu García).

In those cases where the constitutionality of a law that regulates access to the electoral ballot is challenged, the courts are not automatically required to apply strict scrutiny. Submitting automatically each electoral provision to scrutiny would tie the hands of the state in their task of regulating in order to guarantee that the elections take place in a fair and efficient manner. For illustration purposes see *Bullock v. Carter*, 405 U.S. 134 (1972); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi, supra*.

Given the claim of unconstitutionality under the doctrine of free access to the ballot, the Court must, in the first place, determine if the restriction is severe, unreasonable or discriminatory, and examine the nature and magnitude of the alleged damage and the dimension of prejudice caused. If it is determined that the restriction is severe, unreasonable or discriminatory, the regulation shall be subject to strict scrutiny.

Under the doctrine of free access to the ballot, it is understood that any restriction which has the effect of making it impossible for any new candidate or political association to have access to the electoral ballot is severe.

The question to be answered is if a candidate that exercises reasonable diligence can satisfy the requirements imposed by the State.[8] For illustration purposes see *Storer v. Brown*, 415 U.S. 724 (1974); *Jennes v. Fortson, supra; Norman v. Reed*, 502 U.S. ___, 116 L.Ed.2d 711 (1992).

In those cases where the restriction imposed by the statute is reasonable and non-discriminatory, the standard of balance of interest is applied. In this process, governmental interests justified by the imposition of the restrictions challenged are analyzed and are weighed against the nature and magnitude of the damages alleged by the plaintiffs to their right to vote and free association. Then, there is a determination as to whether the governmental interests claimed by the State in adopting the regulation are legitimate, and if the importance of those interests justify the imposition of the regulation challenged. Within this analysis, an important interest of the State would be to support the constitutional validity of the regulation. *Sánchez y Colón v. E.L.A. II, supra; Anderson v. Celebrezze, supra; Burdick v Takushi, supra.*

It is up to us then to identify and evaluate what is the nature and magnitude of the damages alleged by the Partido Acción Civil, and to determine if restrictions imposed by the articles challenged of the Electoral Act

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[8] The lower federal courts, in analyzing the burden of the restrictions imposed, used what is known as the totality approach. This entails considering the burden imposed by the provision challenged keeping in mind the totality of the electoral scheme. *McLaughlin v. North Carolina Bd. of Elections*, 65 F.3d 1215 (4th Cir. 1995); *Schulz v. Williams*, 44 F. 3d 48 (2d Cir. 1994).

are unreasonable or discriminatory. If there is a determination that said restrictions are reasonable and non-discriminatory, then we must evaluate the governmental interests that justify the imposition of the regulation, given damages to the right to vote and free association alleged by the Partido Acción Civil.

The Partido Acción Civil alleges that both provisions challenged are extremely burdensome, unreasonable and discriminatory and impossible to comply with, and they answer to partisan oligarchy. It alleges that given said provisions, it will be impossible for them to comply, within the term required, with the number of endorsements that must be presented before the C.E.E. to obtain registration as a party by petition.

Furthermore, it alleges that the requirement to give oath before a notary public places unnecessary obstacles to its right to free access to the electoral ballot and that it limits the creation of the political parties to the class of attorneys. It alleges that the requirement to give oath before a notary public limits the number of endorsements that can be collected, given the limited total number of attorneys in our jurisdiction. It states that no attorney is willing to leave his/her office to collect endorsements, because the fees received for each endorsement is $1.00, which represents a loss.[9] It also alleges that said requirement forces it to first hold a campaign to recruit notaries to then recruit voters, which becomes very costly.

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[9] Notaries receive from the C.E.E. a dollar for each valid notarized petition as fees for their work. Art. 3.0001 (3) of the Electoral Act, 16 L.P.R.A. sec. 1301 (3).

Regarding the requirement of submitting duly sworn endorsements to the C.E.E. within seven days, the Partido Acción Civil alleges that this is a burdensome and unreasonable term given that it is too short a period to render the written reports required, make copies, verify endorsement against electoral lists and take them to the C.E.E.

There is no doubt that the allegations by the Partido Acción Civil demonstrate that the provisions challenged make it more difficult for a political group that wishes to have access to the electoral ballot be recognized as a party by petition. However, we cannot agree that its allegation that the requirements imposed make it impossible for a political group to obtain its registration. In present day Puerto Rico,[10] there are 6,735 notary publics distributed throughout the island. Furthermore, history has shown that in 1984, the Partido Renovación Puertorriqueña was able to get registered having to comply with the same requirements as those now challenged by Partido Acción Civil.

An analysis of the provisions challenged demonstrate, in the first place, that said challenged provisions are not discriminatory. They apply equally to any political group that aspires to participate in the electoral ballot as a party by petition, regardless of its political or social ideology.

As far as reasonability of the restrictions, we must examine the interests of the State in such an imposition, if said interests are legitimate and if its importance justifies the imposition of the regulation challenged.

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[10] February 24, 2000.

A. Requirement that the petitions for registration be sworn to before a notary:

Public Law No. 4 of November 15, 1978 amended Article 3.001 of the Electoral Act and added the requirement that petitions for registration of parties by petition be sworn to before a notary public. The reason for said requirement was given in the Report of the Government Commission of the P.R. Senate regarding the P. of the H. 896:

> Inadvertently and in considering and approving the current Electoral Act, the requirement that the petitions to register parties by petition be sworn to was not included, and it is now our intention to correct said omission, adding the word[s] sworn to cases where there is reference to the petitions for registration. With this, we fill an existing gap, following the tradition of the registration process of the parties by petition.
>
> .....
>
> The requirement of an oath for the petitions for registration establishes a guarantee of the veracity of the intention of the voter expressed in the petition, and the purity of the registration process of the parties is protected. This also allows sanctions for any illegal act by the person taking the oath. *In Re Jorge Landín and José Aulet*. Opinion of April 13, 1978.
>
> Our political history is full of examples regarding parties that either were not able to get registered, or if they were able to, did not maintain their status for very long, demonstrating in this manner the lack of solidity and scope desirable in a solid and stable democratic system,

> [sic] as is the one in Puerto Rico . . . Report of the Government Commission of the Senate of November 3, 1978.

The report of the Government Commission of the House of Representatives summarized the interest of the State in requiring the intervention of notaries:

> The requirement of sworn petitions for the registration of a party by petition establishes a public trust of the veracity of the intent of the voter to create a new Party that will represent the political interest of a sector of the People of Puerto Rico and guarantees the purity of the process. Report of the Government Commission of the House of Representatives of October 28, 1978.

In Puerto Rico, notaries are officers in charge of guaranteeing the authenticity of the signature made before them, through notary public faith. Art. 2 of the Notary Act, 4 L.P.R.A. sec. 2002. The intervention by a notary grants a certain presumption of veracity to the documents on which they intervene. With the requirement of the intervention by a notary, the Legislative Assembly opted to guarantee the reliability of the petitions through the participation of the only officers vested by the Supreme Court to guarantee, with the operating under public faith, those documents sworn to. *In re: Notaría de la Lic. Algarín Otero,* 117 D.P.R. 365 (1986).

Notaries are the sole officers of the notarial certification. They have the obligation to strictly comply with what has been established by the Notary Act. They should be diligent and abstain from attesting if the person that is going to give the sworn statement has not

personally appeared, or if the facts that they sign to are inconsistent with the truth. *In re Sánchez Ruiz*, 105 D.P.R. 848 (1977); *In re Fred H. Martínez*, res. April 12, 1999, 99 TSPR 53.

The notary practice is rigorously regulated in our jurisdiction. Testimonies or declarations of authenticity are regulated under public faith by Articles 56 to 60 of the Notary Act, 4 L.P.R.A. sec. 2091 etc, and by Rules 64 to 73 of the Notary Regulation, 4 L.P.R.A. Ap. XXIV R. 64 to 73. The law and the Regulation require that they be registered with the Registry of Testimonies and that they be reported in the Monthly Index that must be filed by every notary. The notary has the obligation of attesting both in the testament as well as in the Registry of Testimonies, of his personal knowledge of the undersigned or in his absence, the use of supplementary methods in Art. 17 of the Notary Act. The Registry of Testimonies is reviewed by Protocol Inspectors to insure that the notary has complied rigorously with the provisions under the law.

The provisions of the Notary Act, Canon 35 of Professional Ethics, 4. L.P.R.A. Ap. IX C. 35, imposes on the attorneys the obligation to 'adjust to the sincerity of the acts [. . .] in drafting an affidavit or other documents." *In re: Rivero Arvelo y Ortiz Velázquez* 132 D.P.R. 849 (1993); *In re: Chaar Cacho*, 123 D.P.R. 655 (1989). If the provisions under the Notary Act or the Professional Ethics Canons are not complied with, the notary is subject to severe disciplinary sanctions.

It is an undisputed fact that the State does not have enough officers to control the legitimacy of the process of

the endorsements for new parties. The Legislative Assembly has required the intervention of notaries, the only officers authorized to act based on the operation under the public faith, as an initial screen that grants the presumption of veracity to the endorsements obtained.

The intervention by the notary answers also to immediate interest of the electoral process, in face of the history of electoral fraud and corruption in Puerto Rico. The practice popularly known as "emptying of lists" (*vaciado de listas*), documented in our political history during the registration of the Partido Acción Cristiana in the decade of the sixties, justifies the requirement of an oath before a notary. *In re: Jorge Luis Landín y José Aulet*, 107 D.P.R. 103 (1978);, *In re: María Luisa Ramos*, 86 D.P.R. 125 (1962); *P.S.P. v. Romero*, 110 D.P.R. 248 (1980).[11]

Taking into consideration that the petition for endorsement is the instrument through which, once the number required under the law is obtained, a political group is registered as a party, with all the prerogatives recognized under the law, such as participation in the Electoral Fund, and a notary is the only officer vested with the public trust, the requirement for the intervention of a notary in the swearing of said endorsements is necessary given our history of electoral fraud and corruption and it is a reasonable and legitimate requirement.

We also conclude that the interests of the state in guaranteeing the integrity of the electoral process, of

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[11] Through our electoral history, the criminal statutes against electoral fraud have been ineffective as preventive measures against fraud. *P.S.P. v. Romero*, 110 D.P.R. 248 (1980).

guaranteeing that the signatures in the registration endorsement are reliable and in requiring that political groups that wish to obtain access to the electoral ballot be able to demonstrate that they have the support of the electorate, are legitimate interests and of the utmost importance. We have no doubts that the importance of said interests justify the imposition of the provision challenged.[12]

B. The requirement that the petitions for registration be submitted within seven days after having sworn to them:

The Partido Acción Civil alludes to the fact that it is impossible to present before the C.E.E. the original petition and two copies of each endorsement, as well as preparing the reports of the petitions that are to be presented, with their respective copies within a seven day term. We are not persuaded by their arguments.

The Electoral Code of 1974, as amended, precursor to the current Electoral Act, established that the filing term for the petitions would be 72 hours, with the possibility of a 48 hour extension, if circumstances merited it. The Legislative Assembly amended said provision to extend the term of said provision to seven days. We consider this seven day term granted by Art 3.002 as reasonable, it is possible to comply with it and it answers to a legitimate interest of the State.

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[12] The requirement that the registration documents of a party be notarized was valid in the federal jurisdiction in *American Party of Texas v. White*, 94 S. Ct. 1296 (1976)

The requirement that the sworn registration petitions be presented before the C.E.E. within a seven day period of their execution answers to the interest of the State to avoid an accumulation of multiple registration petitions close to the deadline for party registration. Furthermore, it provides the opportunity for the C.E.E. to notify the group in process of registration, of the number of valid registrations, with enough time to correct any defects in the ones rejected. Said interests are legitimate and valid.

In order to guarantee an adequate examination of the endorsements submitted, given the limited resources of the C.E.E., a mechanism is necessary to gradually examine the petitions, to determine if have been duly perfected. The Legislative Assembly chose the seven day term, which is not unreasonable or excessively burdensome.

Given the allegations of the Partido Acción Civil that it needs to submit 97,784 petitions, the seven day requirement is broadly justified as a mechanism to get the C.E.E. to examine, in gradual and successive periods, the validity of the endorsement submitted.[13]

VII

Before closing, we must point out the following.

Although it is true that the registration process of a political group should not be surrounded by conditions

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[13] A similar requirement was valid in *Matthews v. Morris*, 515 F. Supp. 935, 649 F. 2d 280 (4 Cir. 1981).

and requirements such that would impede the legal organization of a political party thus frustrating the expression of a nucleus of the citizenship, and with it creating an attempt against the very essence of democracy, *Partido Popular v. Gallardo*, 56 D.P.R. 706 (1940), we should not forget that in the exercise of its constitutional authority to regulate the elections process, the Legislative Assembly has the authority to establish reasonable and non-discriminatory requirements for the registration of new parties. Independent from our personal position about the advantages or disadvantages for which our democratic order supposes the concurrence of a multiplicity of parties to the electoral ballots, our function in this case is to determine if the provisions challenged are unconstitutional.

In the exercise of this authority to regulate the elections process, the Legislative Assembly has, throughout the years, amended the Electoral Act, liberalizing the registration requirements for new parties and independent candidates.[14]

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[14] We take judicial knowledge of the presentation by the P of the H. 2438 of March 24, 1999, to amend Art. 3.001 (3) and 3.002 of Public Law No. 4 of December 20, 1977 as amended, known as the Electoral Act, to establish that the parties by petition could file sworn petitions before the C.E.E., in addition to doing so before notary publics, before any officer or employee of the C.E.E. authorized by it to perform that function and to extend the term for filing said petitions before the C.E.E. from 7 to 15 days.

Regarding said Bill, the Report of the Government Commission of the House recommended increasing the payment to the notaries from $1.00 to $2.00, to lower the number of registration petitions to 4%, extend the term from 7 to 15

As part of the electoral reform of 1983, Art. 3.001 of the Electoral Act was amended, 16 L.R.P.A. 3101, to eliminate the dispersion requirement.[15]

From an examination of the electoral scheme in effect in our jurisdiction, we see that in Puerto Rico, a new political party can be formed at any time. The registration period for our parties covers the entire natural year, except for the period from June to November of the general elections years. Among the current provisions that regulate the registration of new parties, there are some that are specially designed to facilitate the registration of new political groups; the requirement for the $3.00 stamp of legal assistance is waived in the sworn registration petitions, Art. 1 of Public Law 126 of August 12, 1996, 16 L.P.R.A. 3028; and furthermore, the C.E.E. pays the promoting group $1.00 for each valid notarized petition as attorney fees. Art. 3.0001 (3) of the Electoral Act, 16 L.P.R.A. sec. 1301 (3). Within our electoral scheme there are also other alternatives, aside from forming parties by petition, to have access to the electoral ballot: the independent candidate and the direct vote. Art. 4.027 of the Electoral Act, 16 L.P.R.A. 3177, and Art. 5.11 of the Electoral Act, 16 L.P.R.A. 3211.

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days, and that the petitions be sworn to before notary publics are well as officers and employees of the Boards for Permanent Registration (Juntas de Inscripción Permanente) authorized to perform that duty.

[15] Until 1983, in order to register a party by petition, the presentation of sworn petitions was required with no less than 5% of the total votes for the position of Governor in the previous election, and that 5% was to be distributed geographically throughout at least, half or more of the electoral precincts.

Having examined the provisions challenged by the Partido Acción Civil, we come to the conclusion that they do not violate the doctrine of access to the electoral ballot. Said provisions are not discriminatory, since they impose the same requirements to all political associations that aspire to become a party by petition, independently of their ideology or ideals. Although the provisions challenged, do impose a burden on the Partido Acción Civil, it is not as severe as to make it impossible for a political group with a reasonable degree of diligence to obtain access to the electoral ballot.

Regarding the allegations that the Partido Acción Civil has received unequal treatment regarding the candidates to primaries of traditional political parties, and to political groups in the plebiscite process, we conclude that political groups that aspire to register as parties by petition to participate in general elections are not equally situated as the candidates to primaries of the political parties and political groups that concurred in the last plebiscite.

The provisions challenged constitute a reasonable exercise in the discretion of legislative power to further legitimate interests and those of singular importance. The objective of guaranteeing an electoral process that is fair and free of fraud justifies the imposition of said requirements on the Partido Acción Civil.

It is the duty of the Legislative Assembly, and not this Court, to modify, if deemed necessary, the requirements for the registration of a party by petition. Said authority is constitutional in nature, Const. De P.R., Art. VI, Sec. 4 and as such deserves our deference.

Corresponding Judgement is issued.

[Signed]
Federico Hernández Denton
Associate Judge

IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil	)	No. AC-1999-20
Petitioner	)	Certiorari
v.	)	
Commonwealth of Puerto Rico, et al	)	
Appellees	)	

JUDGEMENT

San Juan, Puerto Rico, February 25, 2000.

Based on the preceding opinion, which is made an integral part of the document at hand, the Judgement by the Appeals Circuit Court is confirmed upholding the constitutionality of Arts. 3.001(3) and 3.002 of the Electoral Law, Law No. 4 of December 20, 1977 as amended. 16 L.P.R.A. 3103 (3) and 3102

It is so pronounced and mandated by the Supreme Court. Associate Judge Hon. Negrón García issued the Dissenting Opinion. Associate Judge Hon. Naveira de Rodón and Associate Judge Fuster Berlingeri dissent without written opinion.

[Signed]
Isabel Llompart Zeno
Secretary of the Supreme Court

IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil Petitioner v. Commonwealth of Puerto Rico, et al Appellees	)	No. AC-1999-20

Dissenting Opinion of Associate Judge
Hon. Negrón García

San Juan, Puerto Rico, February 25, 2000.

"No one would ever say that there should be undue obstacles in the path of a new and responsible political movement that wishes to include its candidates in the electoral ballots so that the public can evaluate them. On the other hand, no serious political observer would defend the rights of frivolous and opportunistic 'parties' to confuse the ballot and the electorate. The problem is to determine if the concern of those opposed (to the new parties) due to fact that it would threaten the pleasant 'stability' of the present system is justified or not." M. Pabón, *Los Derechos y los Partidos Polfticos en la Sociedad Puertorriquena*, Ed. Edil, San Juan, 1968, page 110.

I

The subordination of political order to the rights of man and insuring free participation of the citizen in collective decisions – Preamble, Constitution E.L.A.-, becomes illusive when undue obstacles are placed on

individual access to the ballots, and to the right to associate and form groups and candidates. Ortiz v. Barreto, 110 D.P.R. 84 (1980); P.S.P. v. C.E.E., 110 D.P.R. 400 (1980); García Passalacqua v. Tribunal Electoral, 105 D.P.R. 49 (1976).

The unquestionable authority of the Legislative Assembly to regulate these rights is not absolute: **equality in treatment is a requirement *sine qua non* to validate the process itself**. Gimenez v. J.E.E. 96 D.P.R. 943 (1968); P.R.P. v. E.L.A., 115 D.P.R. 631, 638 (1984). If in face value or in practice, legislation is unreasonably burdensome and substantially inhibits the genesis of new parties, or it creates situations of inferiority, the courts under **strict judicial scrutiny** have the duty to replevy the right **to vote, association, and electoral equality**. If the equalitarian principle which should rule in any electoral process is sacrificed, **maintaining or introducing** different and more burdensome rules – thus diminishing the real potential of the citizen to organize in order to participate collectively in the political process (without the State being able to oppose and demonstrate imminent interest) – our judicial responsibility is to reject it in favor of the **fundamental constitutional rights** involved. The goal of the **P.A.C.** to become part of the ballot as a partisan political option in the next elections has been frustrated with the respectable majority opinion.

II

The requirement for **exclusive swearing of the petitions for endorsement before a notary public** established

by Art. 3.001 (3) of the Electoral Act,[1] Public Law No. 1 of November 15, 1978 was justified based on the perception of the Legislative Assembly of "complying with a tradition in our process of registration of parties by petition." (*Report of the House of Representatives, October 24, 1978*).

The history of the original Electoral Act of 1919 to the electoral code of 1974 and the Electoral Act of 1977 does not support the legislative conclusion and the existence of that "tradition". The requirement of **"notary exclusivity"** was established in **1978**. In the Puerto Rican Electoral environment, the legal reality had always been very broad: to swear before any officer duly authorized by law and judges; in fact in the decade of the 1960's, the Presidents of the Local Electoral Boards were added.

The present legislative imposition that registrations may be sworn **only before notaries**, is a clear restriction given the easy access to other officers available to travel throughout the island on a full time basis in public duties.

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[1] Reads as follows:

"A 'Party by Petition' shall be considered to be any group of citizens with the goal of participating in the electoral ballots in general elections on or before the first of June of the election year which registers as a political party by filing the petitions before the Commission sworn to that effect, before duly admitted notary publics, . . . , who will receive from the Electoral Commission (1) dollar for each notarized petition as fees, undersigned by no less than five (5) percent of the total votes deposited for all candidates to Governor in the previous election . . . "

Recruiting exclusively attorneys-notaries so that, for a mere $1.00 per petition, asking them to set aside the practice of law and concentrate their work in this type of activity of registration is burdensome. We also make note of the responsibility to file before the State Commission notary reports every fifteen (15) days – containing an accounting of the petitions for registration which have been notarized (Sec. 3.3 of the Regulation for the Registration of Parties by Petition)-, the task becomes even greater when preparing their Registries of Testimonies and Monthly and Yearly Indices required under the Notary Act.

The legitimate reason for the requirement of **notarial exclusivity** which the State claims prevents fraudulent and frivolous candidates, given that the signatures are being reliable and that the political groups have the support of the electorate, were guaranteed without stifling the birth of new parties.

Sec. 6.1 of the Regulation for the Registration of Parties by Petition, creates a process of revalidation of petitions in the **Validation Section** of the State Commission, where its officers determine "the correctness, legality and validity" of each petition and it verifies them against the records and archives of the Commission. Among the bases for rejecting a petition of registration there is that "the signature of the petitioner [is] incompatible with what appears in the petition of registration as voter." Sec. 4.7 (f). Differing from the majority thesis, the State Commission, a duly notarized endorsement does not totally afford it the presumption of correction and legitimacy.

There should not be any doubt that given the majority rejection of the alternate mechanism allowing for the signatures of the endorsement petitions to be also made before the officers of the Permanent Registration Boards (Junta de Inscripciones Permanentes) of each municipality,[2] the requirement for notarial exclusivity established by Art. 3.001 (3) of the Electoral Act, is unconstitutional: there are less cumbersome means to safeguard the interests of the State.

Today's decision is a clear judiciary example of Partisanship prevailing over Democracy.

[Signed]
ANTONIO S. NEGRON GARCIA
Associate Judge

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[2] These Boards perform a **continuous** registration, transfer and relocation process of voters, which are matters where electoral purity must prevail. Its authenticity and availability on a full time basis and the authentication of the signatures supports certifications issued by its offices – they will achieve the same legislative goals. This mechanism is **supplementary to the use of notaries** and in historic terms is closer to what has been the "tradition" regarding the registration of new parties. This alleviates the burden of recruiting attorney-notaries as the sole legal option available for the authentication of signatures.

CERTIFIED TRANSLATION

Commonwealth of Puerto Rico
IN THE CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT I – SAN JUAN
PANEL III

PARTIDO ACCION CIVIL	KLAN9900158
Plaintiff-Appellant	Appeal originating from the Court of First Instance, Superior Court, San Juan Part
v.	
COMMONWEALTH OF PUERTO RICO; STATE ELECTIONS COMMISSION, ETC.	Case No. K PE98-0866 (907)
Defendants-Appellees	

Panel comprised of its president, Judge Arbona-Lago, and Justices Brau-Ramírez and Urgell-Cuebas. Arbona-Lago, J.

JUDGMENT

In San Juan, Puerto Rico, on March 25, 1999.

The Partido Acción Civil appeals a summary judgment entered on January 21, 1999, by the Court of First Instance, Superior Court, San Juan Part, in cause KPE98-0866. Through said decision, the lower court dismissed an action for declaratory judgment and permanent injunction in which certain articles of the Puerto Rico Electoral Act, 16 L.P.R.A. § 3001, *et seq.*, were asked to be declared unconstitutional. The State Elections Commission filed an opposition to the appeal on March 9, 1999.

On March 16, 1999, appellant requested, through a motion in aid of jurisdiction, that it be allowed " . . . to begin collecting endorsements using *ad hoc* notaries." The State Elections Commission opposed said request by motion filed on March 24, 1999. We are now in a position to decide.

Background

On October 6, 1998, the Partido Acción Civil (PAC), a political group interested in becoming a party by petition to participate in the elections to be held in Puerto Rico late in the year 2000, filed the captioned civil action. By petition for declaratory judgment and permanent injunction it requested that the lower court declare unconstitutional Articles 3.001 (3) and 3.002 of the Puerto Rico Electoral Act, 16 L.P.R.A. §§ 3103 (3) *[sic]* and 3102. These legal provisions require that petitions to register a political party in Puerto Rico be sworn before a notary public and filed with the State Elections Commission (SEC) within the term of seven days of having taken the oath in question. In synthesis, the PAC alleged that such requirements are onerous and that they violate the constitutional guarantee of equal protection under the laws, Const. of the Comm. of P.R., Art. II, § 7 (Bill of Rights).

Furthermore, plaintiff requested that the lower court issue an order for preliminary and permanent injunction against the SEC for the SEC not to require that the PAC comply with said legal requirements (§ 3103 (3) *[sic]* and 3102 of L.P.R.A.) and for the SEC to adopt the registration process for candidates who will participate in the internal primaries of the already registered political parties, Art.

4.009 of the Electoral Act, 16 L.P.R.A. § 3159, as an ideal process to register the PAC as a party by petition.

Subsequently, the codefendants appeared before the lower court, through separate motions, requesting the dismissal of the captioned complaint.

After several procedural stages, on November 10, 1998, the PAC filed a "Motion in Compliance with Order, Request for Summary Judgment and Permanent Injunction," in which it listed certain "material facts" which allegedly were not controverted by defendant, and it requested that the illustrious lower court enter summary judgment in its favor, pursuant to the allegations of the complaint. Codefendants timely filed several motions in opposition to the entry of summary judgment.

On January 21, 1999, the lower court entered the judgment appealed, dismissing the captioned complaint in all of its parts. In this way, it decided that for its registration as a political party, the PAC could not demand from the SEC treatment equal to that granted to the parties already registered for internal primaries. In evaluating the alleged unconstitutionality of Articles 3.001 (3) and 3.002 of the Electoral Act, the lower court adopted the analysis of rational nexus, and found that the different legal requirements, depending on whether they were dealing with the registration of a new political party or of an internal primary proceeding in an already registered party, respond to valid and legitimate interests of the State.

Not content, on February 24, 1999, the PAC appealed to this appellate forum[1] and it charged the commission of the following errors:

> 1. The Honorable Court of First Instance erred in applying the scrutiny of reasonableness in evaluating the law applicable to the facts of this case, in contravention of the constitutional minimum provided in the ruling federal case law.
>
> 2. The Honorable Court of First Instance erred in concluding that the Partido Acción Civil and its members are not in equal position before the law, for purposes of guaranteeing the reliability of the endorsements to have access to the electoral ballot as candidates, as are the traditional parties and their members and as Pro E.L.A.
>
> 3. The Honorable Court of First Instance erred in entering summary judgment without considering all of the uncontroverted facts material to the instant challenge.
>
> 4. The Honorable Court of First Instance erred in depriving the Partido Acción Civil and its members of due process of the law in entering summary judgment without an evidentiary hearing to give the opportunity to establish through a preponderance of the evidence that the challenged statutes are unconstitutional in their application.

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[1] From the certificate of the petition for appeal it does not appear that appellant complied with the requirement contained in Rule 58 (B) of our Regulation, 4 L.P.R.A. App. XXII(A). See also *Eastern Sands Inc. v. Roig Com. Bank*, 146 D.P.R. ___, 98 J.T.S. 93.

Having submitted the matter, appellant filed a Motion in Aid of Jurisdiction requesting, as stated above, that this forum authorize the gathering of endorsements using *ad hoc* notaries designated by the SEC and that it order this agency to receive all endorsements, including those filed after the seven day term set forth in Art. 3.002 of the Electoral Act, *supra*.

Discussion and Analysis

I. Procedural Aspect

Appellant alleges that the Court of First Instance erred in entering summary judgment without taking into consideration all of the "material" facts not controverted by defendant. In the alternative, the PAC also states that the illustrious lower court erred in deciding the captioned complaint through summary judgment, without granting it the opportunity to establish through a preponderance of evidence that the challenged statutes are unconstitutional in their application.

As is evident from the record, the PAC filed a motion for summary judgment in which it listed a series of "facts" stated in the complaint, which allegedly were not controverted by appellees; thus, it understood and understands that there is no real substantial controversy as to Articles 3.001 (3) and 3.002 of the Electoral Act:

> "a) they subordinate the creation of parties by petition to the legal profession;
>
> a) they limit the number of endorsements that can be collected on a daily basis;

b) the task of collecting endorsements becomes prohibitive for an attorney because economically it is a losing proposition;

c) an attorney must collect endorsements and prepare four reports in exchange for a dollar;

d) the PAC must undertake a campaign to recruit attorneys before the campaign to collect endorsements;

e) the members of the traditional parties are allowed to be candidates in the primaries without having to have attorneys swear the endorsements;

f) the independent candidates have access to the electoral ballot by collecting endorsements whose oaths are notarized by voters qualified by the SEC to take oaths;

g) the promoters of free association in the electoral process of December 13, 1998 have *[sic]* access to the electoral ballot collecting endorsements whose oaths are notarized by voters qualified by the SEC to take oaths;

h) there are less onerous ways to advance the objective a State may have that the petitions for registration be sworn than requiring an attorney;

i) the seven day requirement to file the endorsements after having taken the oath is too brief and impossible to fulfill;

j) there is no legal or logical foundation to establish at seven days the term to file the endorsements after having taken the oath;

k) the SEC has forty-five days to pass judgment on these endorsements."

As is known, Rule 36 of the Rules of Civil Procedure, 32 L.P.R.A. App. III, R.36, regulates the extraordinary and discretionary remedy of a summary judgment. Consonant with the ruling principle in our procedural system enunciated in Rule 1 of the Rules of Civil Procedure, 32 L.P.R.A. App. III, R.1, Rule 36.3, 32 L.P.R.A. App. III, R.36.3, provides that:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions offered, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary judgment as a matter of law." *[Official translation.]*

The main purpose of a summary judgment is to speed up the processing of a case allowing the entry of judgment without having to hold the trial on its merits, when from the uncontroverted documents accompanying the request and the entire record, *Medina v. Merk*, 95 J.T.S. 52; *Cuadrado v. Santiago*, 126 D.P.R. 272, 280-281 (1990: *Padin v. Rossi*, 100 D.P.R. 259 (1971), it appears that no legitimate issue of facts exists to be discussed, and what remains is to apply the law. *Audiovisual Language v. Natal Parking System*, Opinion of December 15, 1997, 97 J.T.S. 147, p. 400; *Marín v. American Int'l Ins. Co. of P.R.*, Opinion of October 28, 1994, 94 J.T.S. 132, p. 347; *Corp. Presiding Bishop CJC of LDS v. Purcell*, 117 D.P.R. 714, 720 (1986).

The moving party must prove that there is no genuine substantial issue as to any important and pertinent fact, what the procedural system calls "*material*", and that summary judgment should also be entered in its favor, as a matter of law. *Pilot Life Ins. v. Crespo-Martínez*, Opinion

of July 13, 1994, 94 J.T.S. 104, p. 21. Therefore, the opposing party is then in a position to establish to the judicial forum that in reality a genuine issue as to the essential and pertinent facts presented as true by the moving party does exist. *Pilot Life Ins. v. Crespo-Martínez, supra,* p. 21; *Toledo-Maldonado v. Cartagena-Ortiz,* Opinion of December 21, 1992, 92 J.T.S. 173, p. 10229.

It is worth mentioning that in some meritorious cases, the Court may enter summary judgment in favor of a party in a litigation which did not request such remedy; provided that the records have sufficient grounds therefor. In this regard, our highest forum has held that: "There is no doubt that a court may enter summary judgment in favor of a non-moving party if from the records and the documents filed in support and in opposition thereof it appears that no issue exists as to the essential facts and that, as a matter of law, summary judgment should be entered in favor of said party." *M.J.C.A., Minor v. J.L.E.M., Minor,* 124 D.P.R. 910, 930 (1989).

In *Audiovisual Language, etc. v. Natal Brothers, supra,* it has been stated:

> We have repeatedly held that a summary judgment is an extraordinary and discretionary remedy which may only be granted when no genuine issue exists on the material facts and the court is convinced that it has before it the truth as to all of the pertinent facts. Any doubt on the existence of an issue as to the material facts must be resolved against the moving party. **The same may be entered in favor or against the moving party, as may be legally justified.** (Emphasis ours.)

In the situation at issue, the alleged facts in conflict presented by the PAC to attempt to defeat the summary decision more likely constitute the particular opinions and conclusions of the appellant, included in its request for the entry of summary judgment in its favor. In this regard, in *Corp. Presiding Bishop CJC of LDS v. Purcell, supra,* p. 722, it was held that: " . . . it must be born in mind that in a summary judgment proceeding affidavits which contain only conclusions, without specific facts in support thereof, have no probative value, and, thus, they are insufficient to prove the existence of or what is concluded therein. Rule 36.5 of the Rules of Civil Procedure of 1979 (32 L.P.R.A. App. III, R.36.5);" (cites omitted).

Similarly, in the federal jurisdiction it has been held that a statement of facts which contains accommodating opinions, discussions, speculations, and conclusions shall not be considered as facts under the summary judgment proceeding, in order to determine whether in reality a genuine issue exists on the substantial and pertinent ("material") facts which in turn impedes summary disposition, through the application of the legal standards. *Rodríguez v. Puerto Rico Marine Management Inc.*, 975 F.Supp. 132, 124 (D. Puerto Rico, 1997); *Woods-Leber v. Hyatt Hotels of Puerto Rico, Inc.*, 951 F.Supp. 1028, 1034 (D. Puerto Rico, 1996). Therefore, we believe that the Court of First Instance was not required to consider such conclusive allegations and opinions of the PAC as substantial and pertinent facts at issue, in attending to the captioned cause of action through summary means.

Due to the fact that the procedural norms only serve to aid the implementation of substantive law in search of fairness, in order for a summary decision to be justified it

is also necessary that, as a matter of law, the moving party prevail on the merits of the litigious subject. *Tello-Rivera v. Eastern Air Lines*, 119 D.P.R. 83, 84 (1987); *Roth v. Lugo*, 87 D.P.R. 386, 396 (1963).

In this regard, the following pronouncements of the United States Court of Appeals are extremely illustrative:

> "Whether or not opposed, summary judgment can only be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact **and that the moving party is entitled to a judgment as a matter of law.**' Fed.R.Civ.P. 56(c);. . . . ' " *Méndez v. Banco Popular de Puerto Rico*, 900 F.2d 4, 7 (1st Cir. 1990). (Emphasis ours.)

> "This court has made clear that the failure of a non-moving party to file timely opposition to a motion for summary judgment does not, in itself, justify entry of summary judgment against that party, but that **"the district court [is] still obliged to consider the motion on its merits, in light of the record as constituted, in order to determine whether judgment would be legally appropriate.'** (Cites omitted.)" *Mullen v. St. Paul Fire and Marine Ins. Co.*, 972 F.2d 446, 452 (1st Cir. 1992). (Emphasis ours.)

In the captioned cause, both the procedural and the substantive requirements are met.

On the other hand, appellant is wrong when it sustains that the lower court entered summary judgment in favor of appellees without first granting the PAC the opportunity to establish the alleged unconstitutionality of

the statutes in question. Plaintiff appears to point out that its allegations are above the scope of the civil procedural system. If that were so, the significant Rules 10.3 and 36 of the Rules of Civil Procedure, 32 L.P.R.A. App. III, R.10.3 and 36, would be totally superfluous.

After examining the instant file, the illustrious lower court found that no substantial genuine issue existed as to any important and pertinent ("material") fact which requires the holding of an evidentiary trial to discuss the same and, thus, impede the procedural mechanism of summary judgment. The illustrious lower court also concluded, correctly, that as a matter of law defendant's position should prevail on the merits of the litigious matter. We consider, therefore, that the Court of First Instance did not abuse its discretion in recurring to a summary judgment. The errors pointed out with respect to the use of a summary judgment were not committed by the lower court.

Let us now examine the statements of error in connection with the constitutionality of Articles 3.001 (3) and 3.002 of the Electoral Act.

II. Substantive Aspect

In this aspect of the issue and in synthesis, the PAC alleges that the requirements set forth in Articles 3.001 (3) and 3.002 of the Electoral Act in connection with the registration of a party by petition are onerous and violate the constitutional guarantee of equal protection under the laws, Constitution of the Commonwealth of Puerto Rico, Article II, § 7 (Bill of Rights).

Our republican system of government has delegated in the Legislative Branch the authority to establish and regulate the electoral process.[2] In pertinent part, Section 4 of Article VI of the Constitution of the Commonwealth of Puerto Rico states:

> "The law shall provide for everything concerning the electoral process and voter registration, as well as anything relative to the political parties and the slates." Const. Comm. of P.R., Art. VI, § 4.

Pursuant to this delegation of authority, on December 20, 1997, the Legislative Assembly enacted the Electoral Act of Puerto Rico, 16 L.P.R.A. § 3001, *et seq.*, as the basic general law applicable to everything concerning the electoral processes. *P.S.P., P.D.P., P.I.P. v. Romero-Barceló, supra,* at p. 262.

The case law has acknowledged that political parties are vested with quasi-governmental powers since they constitute the groups which the citizens use to express their collective will and to peacefully channel the sundry political tendencies and interests of the country's various

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[2] On several occasions the Supreme Court has acknowledged that the Legislative Assembly derives from the Constitution a very broad margin of authority to legislate in matters of electoral affairs. Consequently, it possesses ample authority to determine and regulate everything concerning the electoral process, including the political parties and the slates, although said authority is limited by the axiom of equality immersed in the Constitution. *P.R.P. v. Commonwealth of Puerto Rico,* 115 D.P.R. 631, 637 (1984); *P.S.P., P.D.P., P.I.P. v. Romero-Barceló,* 110 D.P.R. 248, 256 (1980); *N.P.P. v. Electoral Court,* 104 D.P.R. 741, 746.

sectors. *P.I.P. v. S.E.C.*, 120 D.P.R. 580, 616 (1988); *P.R.P. v. Comm. of P.R., supra*, at p. 638.

In recognition of this role, the Electoral Act attributes certain rights and prerogatives to the political parties, such as participation in the Electoral Fund, representation before the SEC through an Electoral Commissioner, and co-participation of its officials in the voting centers. See, Articles 1.015, 1.027, 3.004, 3.022, 16 L.P.R.A. §§ 30112, 3104, 3115, and 3218.

The Electoral Act defines a **party by petition** as:

> "[A]ny group of citizens who, desiring to appear on the electoral ballot of a general election, shall register as a political party, on or before June 1 of the election year, by filing with the Commission sworn petitions to such effect, before notary publics duly admitted to the practice of notary, pursuant to the Notary Act in effect, who shall collect from the Electoral Commission a fee of one (1) dollar for each valid, notarized petition signed by a number of electors of no less than five (5) percent of the total votes cast for all candidates for the office of Governor in the preceding general election. A government program or political platform, as well as the names and addresses of the group of electors that constitute its central directing body, must also be presented.
>
> The party shall become registered upon acceptance of said sworn petitions, and from that time on may present a complete slate in all the precincts in accordance with the procedures provided in this subtitle." *[Official translation.]* 16 L.P.R.A. § 3101 (3).

Concurrently, Article 3.002 of the Electoral Act regulates petitions for the registration of a party by petition as follows:

> "The Commission will reject every petition for the registration of a political party signed by a person:
>
> (a) Who is not a duly registered elector on the date he signs the petition;
>
> (b) Who during the immediately preceding two (2) year period has signed a petition to register another party; or
>
> (c) Who has not complied with the formalities established in this subtitle or the regulations adopted hereunder, including the veracity and authenticity of the data stated in the registration petition.
>
> The registration petitions of a political party must be filed before the Commission no later than seven (7) days after having taken the oath in question. The Commission, through regulations, shall establish the form and the procedures to be followed for the filing and accepting of said registration petitions." *[Official translation.]*

These requirements stem from the State's legitimate interest in trying to avoid instances of electoral fraud and corruption, *P.S.P., P.D.P., P.I.P. v. Romero-Barceló, supra,* at pp. 270-277, fraudulent or frivolous slates, *In Re: Jorge Luis Landing and José Aulet,* 107 D.P.R. 103 (1978), and voter confusion when presented with multiple candidates on the ballot.

The United States Supreme Court case law has established that under the United States Constitution there is no criterion which must be used invariably and unfailingly on judicial review, with respect to the requirements which by law must be met to register a new political party. *Williams v. Rhodes*, 89 S.Ct. 5 (1968); *Jennes v. Fortson*, 91 S.Ct. 1970 (1971); *Storer v. Brown*, 94 S.Ct. 1274 (1974). The analysis process used in this kind of controversy first requires devising the nature and magnitude of the damage claimed or allegedly suffered by the group requesting registration as a party and which opposes the requirements fixed by law therefor. In light of any unreasonable or severe restriction, the regulation challenged shall be evaluated under the strictest scrutiny. *Norman v. Reed*, 116 L.Ed.2d. 711 (1992). However, when the statute in question imposes reasonable and prudent restrictions, in light of all of the circumstances present, the standard of the balance of interests is applicable. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); known in our jurisdiction as the rational nexus or traditional minimum.

As is known, in general terms the constitutional standard of equal protection under the laws does not, indefectibly, demand equal treatment of all citizens; it prohibits unjustified unequal treatment. Const. Comm. of P.R., Art. II, § 7 (Bill of Rights); *M. & B.S., Inc. v. Dept. of Agriculture*, 118 D.P.R. 319, 332 (1987). When dealing with socio-economic regulations it is necessary to implement traditional analysis, whereby a classification must not be invalidated unless it is clearly arbitrary and a rational nexus cannot be established which justifies a legitimate right of the State. *Disidente Universal de P.R. Inc. v. Dept. of State*, ___ D.P.R. ___ (1998), 98 J.T.S. 68, at p. 1010-1011

M.&B.S., Inc. v. Dept. of Agriculture, 118 D.P.R. 319, 333 (1987); *Vélez Reboyras v. Secretary of Justice*, 115 D.P.R. 533, 538 (1984); *Marina Ind., Inc. v. Brown Bovery Corp.*, 114 D.P.R. at p. 80 (1983). In such cases, the judicial criterion must also presume "juris tantum" that the law is valid and reasonable, thus the burden is on the challenger to prove that there is no rational relationship between the mandate of law and legitimate governmental purposes. *Berberena v. Echegoyen*, 128 D.P.R. 864, 881-882 (1991); *De Paz Lisk v. Aponte-Rogue*, 124 D.P.R. 472; *Vázquez v. Comm. of P.R.*, 113 D.P.R. 148 (1982); *Torres v. Castillo*, 111 D.P.R. 792 (1981).

With respect to the challenge of an electoral law under the constitutional guarantee of equal protection under the laws, in *P.S.P., P.D.P., P.I.P. v. Romero-Barceló, supra*, at pp. 260-261, the Supreme Court of Puerto Rico specifically noted that if: (1) the statute does not establish a classification which is clearly suspicious, (2) does not rely on impermissible constitutional criteria, and (3) does not have the effect of impeding or substantially encumbering the exercise of the right to vote, in analyzing the validity of such classification the court must use the so-called traditional analysis or rational nexus.

In light of the facts reported in the captioned cause of action, we find that the citizens' right to vote is not deprived, limited, curtailed or restricted in any way. This deals only with the legal requirements imposed on all political groups which aspire to concur in the ballot; that is why we are faced with a matter which requires constitutional interpretation pursuant to the above-mentioned traditional scrutiny or rational nexus.

We are forced to conclude that the statutes challenged and the dichotomy of classification between the registration of a political party and an internal primary within an already registered and recognized political party do not impose a severe or onerous restriction on the PAC, in its party inscription process. Such distinction, whose purpose is to pursue two different proceedings in the political ambiance, is totally logical and necessary. It is not the same to claim the right to vote than to register a political party, although both things contain the right to suffrage in our democratic system, they are not identical things. The modern democratic development reports that both important citizen duties may deserve different forms of treatment and regulation and that such responsibility rests on the sound discretion of the legislator. Suffice it to mention that the registration of a voter cannot be regulated in the same way and manner as the registration of a new political party. These are two different entities, although together they form the basic framework of the electoral process.

As stated above, the constitutional principle of equal protection under the laws does not demand that equal treatment always be given to everyone. *Rodríguez v. Comm. of P.R.*, 130 D.P.R. 562, 581 (1992); *People v. Matías-Castro*, 90 D.P.R. 528, 531 (1964); *Zachry Int. v. Superior Court*, 104 D.P.R. 267 (1975); *Alicea v. Córdova*, 117 D.P.R. 680, 696 (1986). The state may make classifications between persons and groups. In fact, without them it could practically not govern. See *Berberena v. Echegoyen*, 128 D.P.R. 864, 882 (1991). The main thing in this regard is that such categories be reasonable and lead to legitimate interests of the state. *Zachry Int. v. Superior Court, supra.*

Similarly, Articles 3.001 (3) and 3.002 of the Electoral Act do not establish a total arbitrary restriction which does not have any relationship whatsoever to the legitimate interests of the State. Thus, it is also justified that the summary judgment appealed be affirmed, as we consider it correct with respect to the interpretation of the substantive law.

Notwithstanding such guarantees (affidavit before a notary and deliveries to the SEC every seven days), it is imperative here to mention that the legislature has become interested in providing some type of aid to the promoters of new political groups, which aspire to form a Party by Petition, provided that does not dilute the former. In this regard, they are exempt from the $3.00 "legal aid" stamp on such affidavit oaths (Law 126, August 12, 1996, 16 L.P.R.A. 3028, supplement) and the SEC pays the promoter group $1.00 "a fee . . . for each valid, notarized petition." 16 L.P.R.A. 3101(3), supplement.

As mentioned previously, plaintiff has not been able to establish that no rational relationship exists between the legal requirements and the legitimate governmental purpose. More so, the PAC attempts to substitute the criterion of the legislature with respect to which reasonable cautionary standards and measures are the ones which should govern the neuralgic process of registration of the PAC as a political party in Puerto Rico.

On the other hand, even though the aforestated would suffice to dispose of appellant's claim, the State has been able to establish that it has legitimate interests which make the adoption of the legal requirements in effect necessary, in order for a group of citizens to be

registered as a political party. These include avoiding instances of electoral fraud and corruption, *P.S.P., P.D.P., P.I.P. v. Romero-Barceló, supra,* at pp. 270-271; fraudulent or frivolous candidacies, *In Re: Jorge Luis Landing and José Aulet,* 107 D.P.R. 103 (1978); or the voter's confusion in light of the presentation of multiple candidates on the ballot.

The requirement that the petitions be presented to the SEC within seven days after the oath was taken is a reasonable measure in light of the need to avoid the accumulation of registration petitions with the SEC, close to the deadline for registering parties; given the limited resources the SEC has with which to carry out this task.

It is indicative to show that the case law of the United States Supreme Court has affirmed the validity of statutes similar to the ones at issue herein. In *American Party of Texas v. White,* 94 S.Ct. 1296 (1974), the Court held that the requirement that petitions for registration of a party be notarized is legitimate and valid. *Williams v. Rhodes, supra,* affirmed a law of the state of Georgia that required that a political group present a number of endorsements equal to five percent of those persons who had been eligible, in preceding elections, for the position for which they wished to run.

Decision

Pursuant to the preceding foundations, the judgment appealed is affirmed and the Motion in Aid of Jurisdiction filed by appellant is Denied.

Notify the parties immediately by mail. In addition, notify this document to the dispositive party by telephone.

So agreed by the Court and certified by the General Clerk.

Aida I. Oquendo-Graulau
General Clerk

Certification

I, Olga M. Alicea, an English-Spanish Interpreter and translator certified to that effect by the Administrative Office of the U.S. Courts, do hereby certify that I have personally translated the foregoing document from Spanish to English and that the translation is true and accurate to the best of my knowledge and abilities.

/s/ Olga M. Alicea
Olga M. Alicea, USCCI

Certified Translation
by Thomas H. Kavelin

[A set of initials appears at the bottom left margin of every page of the Spanish source text but the last, which is signed./Tr.]

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SAN JUAN SUPERIOR COURT

PARTIDO ACCION CIVIL (CIVIL ACTION PARTY),	*	
PLAINTIFF	*	CIVIL NO. K.E. 98-0866
VS.	*	(907)
COMMONWEALTH OF PUERTO RICO; STATE ELECTORAL COMMISSION; JUAN R. MELECIO, PRESIDENT OF THE STATE ELECTORAL COMMISSION; ELECTORAL COMMISSIONER OF THE NEW PROGRESSIVE PARTY; ELECTORAL COMMISSIONER OF THE POPULAR PARTY [sic] AND ELECTORAL COMMISSIONER OF THE PUERTO RICAN PRO-INDEPENDENCE PARTY	*	DECLARATORY JUDGMENT AND PERMANENT INJUNCTION
DEFENDANTS	*	

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SUMMARY JUDGMENT

On October 6, 1998, the Civil Action Party (hereinafter, "CAP"), a political group interested in becoming a party by petition, filed the above-captioned complaint. It prayed the Court to enter a declaratory judgment, pursuant to the provisions of Rule 59 of the Rules of Civil Procedure, declaring the unconstitutionality of the requirements contained in the Electoral Act, which stipulated that petitions to register a political party in Puerto Rico must be sworn to before a notary and filed with the State Electoral Commission within the term of seven days from fulfillment [of the notarization requirements]. Articles 3.001 and 3.002 of the Puerto Rico Electoral Act, 16 L.P.R.A. 3101 and 3102.

The plaintiff organization further prayed us to issue both preliminary and permanent orders of injunction against defendants for them to cease from demanding that plaintiff comply with said requirements. Finally, they prayed that we order defendants to adopt the necessary legal measures so that the registration process established by Law for the presentation of candidacies for primaries of registered parties be the one required of the CAP to comply with the necessary requirements for its registration.

Defendants made appearances through separate motions praying for dismissal of the complaint.[1] They

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[1] The Electoral Commissioner of the New Progressive Party made an appearance on October 19, 1998, through a document entitled "Motion to Dismiss". For its part, on October 20, 1998, the Commonwealth of Puerto Rico filed a "Motion in Compliance with Order and Motion to Dismiss". Finally, on that

alleged, in sum, that plaintiff had no standing to bring the above-captioned suit, inasmuch as it is not a political party; that the State Electoral Commission had exclusive jurisdiction on the matter in controversy, for which reason the Court lacked jurisdiction to hear the same; that the judicial scrutiny applicable to the case was rational connection-based analysis and not the strict scrutiny as alleged by plaintiff; that registering a political party was not a fundamental right and that no violation of the constitutional equal protection clause for political ideology had occurred, since all **similarly situated** groups had to satisfy identical requirements as those demanded of plaintiff to enable them to register as parties by petition. Furthermore, they averred that the contested requirements were reasonable and that they were in response to an important interest of the State, which has broad power to regulate electoral processes. Plaintiff timely posed its opposition to the motions for dismissal.

On November 10, 1998, after several procedural steps,[2] plaintiff filed a document entitled "Motion in Compliance with Order, Prayer for Summary Judgment and permanent Injunction", in which it reiterated the

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same date, the State Electoral Commission and its President filed a "Motion in Compliance with Order and Prayer for Dismissal".

[2] On October 26, 1998, plaintiff presented a document "Brief Reply and Motion for Extension", in response to codefendants' motions for dismissal. For its part, on October 29, 1998, codefendant Electoral Commission of the New Progressive Party filed a "Motion Accompanying Exhibit and Reply to Opposition to Motion for Dismissal".

arguments outlined in the complaint and in its Opposition to the Motions for Dismissal, and prayed that the Court enter judgment in its favor, in the same terms set forth in the complaint. Codefendants each filed motions in opposition to entry of summary judgment.[3]

With the benefit of the parties; appearances,[4] we are in a position to rule. On the basis of the documents and the admissions of the parties, we conclude that in the above-captioned case there is no real substantial controversy as to the following.

MATERIAL FACTS

1. Plaintiff, Civil Action Party (CAP), is a group of citizens wishing to register as a party by petition in order to participate in the elections to be held in Puerto Rico in the year 2000.

2. The State Electoral Commission (hereinafter, "the Commission") is the administrative agency which is in

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[3] The Commission filed its "Brief Reply and Opposition to Summary Judgment" on November 25, 1998. For its part, the Electoral Commission of the N.P.P. filed its "Motion in Compliance of Order and Opposition to Summary Judgment" on December 2, 1998. Finally, the Commonwealth of Puerto Rico filed a "Motion in Compliance with Order, In Reply to the Prayer for Summary Judgment and in Opposition to Permanent Injunction" on December 4, 1998.

[4] It is necessary to point out that on December 17, 1998, plaintiff filed a document entitled "Motion for Preliminary Injunction", in which it reiterated its original prayer for a Preliminary Injunction. For its part, codefendant Commonwealth of Puerto Rico filed an Opposition to that motion on December 28, 1998.

charge of electoral matters in Puerto Rico. Its President, the Hon. Juan R. Melecio, is the official in charge of administering the Commission. Codefendants Electoral Commissioners of the New Progressive, Popular Democratic and Pro-Independence Parties hereinafter, "N.P.P., P.D.P. and P.I.P.", respectively) are the officials in charge of making decisions concerning electoral matters, pursuant to the authority vested in them by the Electoral Act. Also appearing as a codefendant in the lawsuit is the Commonwealth of Puerto Rico, by virtue of the obligation of the Secretary of Justice to defend the constitutionality of the laws of the land.

3. The Electoral Act defines "party by petition" as: " . . . any group of citizens that, for the purpose of appearing on the electoral ballot of general elections, on or before the June primary for the election year, registers as a political party, by filing with the Commission **sworn petitions to that effect, before notaries public admitted to notarial practice**, pursuant to the provisions of the current Notarial Act. . . . signed by a number of electors no less than **five (5) percent** of the total of votes cast for all the candidates in the office of Governor, in the preceding general elections. Art. 3.001 of the Electoral Act, 16 L.P.R.A. 3101 (3). (Emphasis ours). In accordance with the afore cited legal provision, in order to be registered as a party by petition, the CAP needs to obtain 98,685 sworn petitions.

4. Pursuant to the provision of the Act, duly sworn petitions for registration must be filed with the Commission, accompanied by their respective complementary reports, "no later than seven (7) days from taking the

oath in question". Art. 3.002 of the Electoral Act, 16 L.P.R.A. 3102.

5. On the date of filing of the above-captioned complaint, the CAP had two notaries public to swear in their registration petitions. Furthermore, it had identified more than twenty volunteers – who are not notaries public – willing to work to get the necessary endorsements for the party's registration.

6. In the term between October 1, 1998 and May 31, 2000, there are 609 days. This means that in order to be duly registered, the CAP would have to work to get an average of 162 endorsements a day, or 1,134 petitions a week.

7. Since in its view the requirements established by the Electoral Act for a party to register are onerous, the CAP filed the above-captioned complaint.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Current case law in our country has fashioned a series of requirements with which a plaintiff should comply in order for its standing to be recognized to bring suit; to wit: (1) that it has suffered a clear and palpable damage; (2) that the damage be real, immediate and precise and not an abstract or hypothetical one; (3) that the cause of action arise under the canopy of the Constitution or a law; and (4) that there be a connection between the damage suffered and the cause of action brought. *Popular Democratic Party v. Rossello,* J.T.S. 165;

Noriega v. Hernandez Colon, 94 J.T.S. 35; *Hernandez Torres v. Hernandez Colon*, 92 J.T.S. 123; *Hernandez Torres v. Hernandez Colon*, 92 J.T.S. 16; *Fundación Arqueologica v. Departmento de la Vivienda*, 109 D.P.R. 387, 392 (1980).

When plaintiff is an association, there are certain additional criteria that have to be filled. These are: (1) that the members have standing to sue in their own name; (2) that the interests which they are seeking to protect be related to the organization's objectives; and (3) that the claim and remedy prayed for not require the individual participation of the members in the lawsuit. *Partido Popular Democratico v. Rossello*, 95 J.T.S. 165; *Col. Opticos De P.R. v. Vani Visual Center*, 124 D.P.R. 559 (1889).

2. On the other hand, the Electoral Act defines "person" as " . . . any natural or artificial person, regardless of how it has been constituted, such as any association, organization, partnership, entity or group of persons acting independently or collectively". 16 L.P.R.A. 3003 (44).

3. Based on the aforesaid criteria, we must needs conclude that plaintiff has standing to bring the above-captioned lawsuit. On the one hand, plaintiff is alleging a damage that certainly affects it personally; to wit: the alleged difficulty in registering as a party by petition. This is a clear and palpable damage, not a hypothetical one, arising under the canopy of a law of the Constitution. Furthermore, the damages alleged by plaintiff are intimately related to its purpose as an organization; to wit: its interest in being registered as a party by petition, in order to qualify for the benefits said classification brings with it. In addition, the Electoral Action includes groups such as the CAP in the definition of "person". 16

L.P.R.A. 3003 (44). On the other hand, pursuant to Section 3003 (44) of the Electoral Act, the members of the CAP would have standing individually, wherefore their individual participation in the suit is not required, since the CAP can defend the common interest of its members.

4. So, having established plaintiff's standing, we must determine if the Court has jurisdiction to hear the above-captioned case. We shall see.

The doctrine of primary jurisdiction is applicable to determine to which forum – judicial or administrative – the initial authority to adjudicate and hear a matter belongs. *Gracia v. Policia*, 96 J.T.S. 32. *Id.*; *Rivera Ortiz v. Municipio*, 96 J.T.S. 101; *Ferrer Rodriguez v. Figueroa*, 109 D.P.R. 398, 402 (1980).

5. The aforesaid doctrine has two sides: exclusive primary jurisdiction and concurrent primary jurisdiction. With respect to the effects of each of the two elements, the Supreme Court has stated that:

> " . . . In the first, **the law provides that the organism shall be the only one which shall have initial jurisdiction** to examine the claim . . . [Cites omitted] . . . The courts are relieved of any original jurisdiction which they would otherwise have and their function in the cases concerned is limited to judicial review.
>
> Concurrent jurisdiction occurs when the law allows the claim to begin in either the administrative or judicial forum. That is to say, when a claim can be heard in the judicial forum but under a regulatory plan has been referred to a specialized administrative body, the judicial

> process is suspended out of deference to the agency . . . [Cites omitted]".

Colon v. Mendez, 92 J.T.S. 51. (Emphasis ours); *Rivera Ortiz v. Municipio, supra.*

The Supreme Court has reiterated that it is not necessary for the legislature to include the express language of "exclusive jurisdiction", while the statute clearly shows the fact that it is only the agency that can hear the case at the trial stage. *Id.; Ferreteria Matos, Inc. v. P.R. Tel. Co.*, 111 D.P.R. 153, 157 (1980). Furthermore, said High Court ruled that in cases in which the doctrine of primary jurisdiction applies, the rule of exhausting administrative remedies, and its exceptions, does not apply. Rivera Ortiz v. Municipio, supra.

6. On the other hand, even though the constitution's contesting of administrative actions is subject to the rule of exhausting administrative remedies, " . . . agencies cannot decide on the constitutionality of the law which creates them . . . " *Vélez Ramirez v. Romero Barceló*, 112 D.P.R. 716, 728 (1982).

7. In addition, the doctrine of primary jurisdiction presupposes the exercise of discretion or expertise by the administrative agency which will hear the controversy. *Adorno Quiles v. Hernández*, 126 D.P.R. 191, 194 (1990); *Febres v. Feigeé*, 106 D.P.R. 676, 682 (1978). To these effects, the Supreme Court opined that: " . . . in evaluating cases it is necessary to distinguish between issues of legal construction, in which the courts are specialists, and issues suitable to administrative discretion or expertise . . . [Cites ommitted]". *Adorno Quiles v. Hernández, supra*, at p. 195. (Emphasis ours).

8. From the foregoing it can be drawn that the allegation contained in the Motion for Dismissal filed by the Commissioner of the N.P.R., in the sense that the Court lacks jurisdiction to adjudicate the above-captioned lawsuit, cannot prevail. In the first place, in the Electoral Act there is no clear language to the effect that the State Electoral Commission has exclusive jurisdiction over electoral issues. Observe that the Electoral Act only grants the Commission " . . . original jurisdiction to hear, deliberate and rule, *motu proprio* or at the instance of an interested party, on any matter or controversy of an electoral nature". 16 L.P.R.A. 3015. This languages denotes, at best, the existence of concurrent jurisdiction between the Commission and the Court.

9. In the second place, the controversy before the Court is strictly one of law; to wit: the constitutionality of two provisions of the Electoral Act. In conclusion, this is not a case in which administrative discretion or expertise is required. What is required is a legal construction in light of the Constitution. This function belongs precisely to the Courts.]" *Adorno Quiles v. Hernández, supra.*

10. Based on the foregoing, it is clear that the Court has jurisdiction to hear, at the trial stage, the controversy set forth in the above-captioned case.

Having dealt with the jurisdictional aspects raised by defendants, it falls to us to examine the merits of plaintiff's contention.

11. For the constitutional analysis under the cause of equal protection under the laws of the Puerto Rican Constitution two types of scrutiny are used; to wit: minimum or rational connection-based scrutiny and strict

scrutiny. *Velez v. Srio. de Justicia,* 115 D.P.R. 533, 537 (1984).

12. In *Vélez v. Srio., Id.,* the Supreme Court describes traditional scrutiny as follows:[5]

> " . . . It provides that a legislative classification should not be declared void unless it is not arbitrary and no rational connection can be established between it and a legitimate interest of the State. Under this criterion it has been ruled that a law is constitutional as long as a situation of facts can reasonably be conceived to justify the classification, and the burden of proof shall belong to the one alleging the unconstitutionality of the legislation at issue . . . "

Id., at p. 538; *Zachry International v. Tribunal Superior,* 114 D.P.R. 267, 277 (1975); *Marina Ind. v. Brown Boveri Corp.,* 114 D.R.R. 64 (1983); *Berberena v. Echegoyen,* 128 D.P.R. 664, 879 (1991); *Rodriguez v. ELA,* 92 J.T.S. 63; *Defendini v. ELA,* 99 J.T.S. 119; *Disidente v. Departamento de Estado,* 98 J.T.S. 68.

Under this scrutiny, the courts grant great deference to the Legislature's discernment as to what is necessary and reasonable for the common good. See *United States Trust Co. of New York v. New Jersey, supra,* at p[p].

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[5] Art. II, Sec. 7 of the Constitution, in its relevant portion, reads: " . . . No one shall be deprived of his freedom or property without due process of law, nor shall anyone in Puerto Rico be denied equal protection under the law . . . " For its part, Art. II, Sec. 1, in its relevant portion, states that "no discrimination whatsoever may be established based on race, color, sex, birth, origin or social status, nor political or religious ideas."

1517-1518; *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 103 S.Ct. 697, 705 (1983).

13. The courts apply strict scrutiny in situations in which fundamental rights or suspect classifications are involved. Regarding this scrutiny, the Supreme Court has stated:

> "The second criterion, of more recent genesis and as a reaction to the dissatisfaction generated by the first one, establishes that when the classification affects the citizenry's fundamental rights and, is directed against a suspect classification, the same is subject to strict legal scrutiny. In this case, it is up to the State to demonstrate the existence of a pressing or compelling state interest which justifies the classification and that the same necessarily fosters the achievement of that interest. This criterion has been applied to certain laws which establish suspect distinctions, such as those based on race, nationality, citizenship, poverty or birth".

Zachry International v. Tribunal Superior, supra, at pp. 277-178. (Emphasis supplied.); *León Rosario v. Torres,* 109 D.P.R. 804, 813 (1989); *Com. de la Muger v. Srio. de Justicia,* 109 D.P.R. 715, 731 (1980); *Disidente v. Departamento de Estade, supra.*

14. Pursuant to the aforesaid case law standards, with the United States and the Puerto Rico Supreme Courts have reiterated that no criterion has been established that should invariably be used in the legal analysis of the requirements which should be demanded for the registration of new parties. *Williams v. Rhodes,* 89 S.Ct. 5 (1968); *Jennes v. Fortson,* 91 S.Ct. 1970 (1971); *Storer v. Brown,* 94 S.Ct. 1274, 1279 (1974). The process of analysis

has been one of studying the particular circumstances of each case, distinguishing them from one another, as to which requirements it considers reasonable. Strict scrutiny has been used " . . . solely in the face of a severe or unreasonable restriction . . . [Cites ommitted] . . . " *Sánchez Vilella v. ELA*, 93 J.T.S. 13c (Concurring Opinion by Chief Justice Andréu Garcia.

Thus, for example, in *Williams v. Rhodes, supra*, Ohio's Electoral Act of Ohio was declared unconstitutional, since it required registration petitions to be submitted in a number equal to fifteen percent of the total of ballots cast in previous elections for the office of Governor. Furthermore, the legislation did not allow independent candidates. In articulating the analysis which would have to be applied to this type of case, the United States Supreme Court stated that:

> " . . . In determining whether or not a state law violates the equal protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."

Id., at p. 10.

After the aforesaid analysis, the Court concluded that, while it is true that the State has a legitimate interest in having the persons elected in an election represent the majority of voters and even acknowledging the State's broad power to regulate election processes, the challenged provisions of the Ohio law made it virtually impossible for parties other than the two majority parties to be included on the ballot. Because of this, it ruled that

these provisions created discrimination prohibited by the Equal Protection Clause. *Id.*, at p. 12.

15. Nevertheless, in *Jennes v. Fortson, supra,* the United States Supreme Court reached the opposite conclusion. The Court compared the legislation challenged in *Williams v. Rhodes, supra,* with Georgia's Electoral Act. The Georgia legislation defined "political party" as that organization whose candidate had received at least twenty percent of the vote in the prior elections. Any other political organization would be called a "political body". The legislation required that registration petitions of independent candidates and "political bodies" be signed by a number equal to five percent of those people who had been eligible in the prior elections to vote for the position for which the candidate was interested in running. Furthermore, the term in which to circulate the petitions was one hundred and eighty days. In addition, the electors had no restrictions at all as to write-in votes.

In comparing the requirements of Georgia's legislation with those of Ohio, challenged in *Williams v. Rhodes, supra,* the United States Supreme Court concluded:

> "Unlike Ohio, Georgia freely provides for write-in votes. Unlike Ohio, Georgia does not require every candidate to be the nominee of a political party, but fully recognizes independent candidacies. Unlike Ohio, Georgia does not fix an unreasonably early filing deadline for candidates not endorsed by established parties. Unlike Ohio, Georgia does not impose upon a small party or a new party the procrustean requirement of establishing elaborate primary election machinery. Finally, and in su, Georgia's election laws, unlike Ohio's do not operate to freeze the political status quo. In this setting, we

> cannot say that Georgia's 5th petition requirement violates the Constitution."

Jennes v. Fortson, supra, at p. 1974.

16. It is evident from the above discussion that, in light of the particular circumstances of each case, if the state's requirements for registration of parties are not excessively onerous, they shall be constitutionally validated by the courts. However, while they shall not always be invalidated, those requirements that are excessively onerous should be judicially analyzed under strict scrutiny. As the United States Supreme Court stated in *Sotrer v. Brown, supra*:

> " . . . substantial burdens on the right to vote or to associate for political purposes are constitutionally suspect and invalid under the First and Fourteenth Amendments and under the Equal protection Clause unless essential to serve a compelling state interest . . . [However, I]t has never been suggested that the *Williams-Kramer-Dunn* rule automatically invalidates every substantial restriction on the right to vote or associate . . . Moreover, as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process. In any event, the States have developed comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates".

Id., at p. 1279.

17. For its part, the Puerto Rico Supreme Court has stated that the fact that the Electoral Act establishes certain classifications " . . . does not imply in and of itself that the constitutional equal protection guarantee has been violated". *P.S.P., P.P.I., P.I.P. v. Romero Barcelo,* 114 D.R.R. 246 (1980). Observe that this case concerned a challenge to the requirement to fill out a form with a sworn statement in the case of electors who could not present their electoral I.D. card in the 1980 general elections. In this case, therefore, the requirement had a bearing on the right to vote.

The Supreme Court ruled that this requirement was not unreasonably onerous, nor from the face of it was it a suspect classification, in that the scrutiny that applied was the traditional one, that of rational connection. *Id.*, at p. 261. To that effect, it stated that: " . . . the pertinent criterion to examine the reasonableness of the classification at issue here, in our judgment, is the so-called traditional analysis. Its use in election cases, while not frequent given the importance of the high values involved, is solidly established . . . [Cites ommitted] . . . " *Id.*

18. Furthermore, the highest forum in our country has recognized both that the right to vote is a fundamental right and that the State has very broad powers to regulate election processes. *Ramirez de Ferrer v. Mari Bras,* 97 J.T.S. 134; *Sánchez Vilella* v. *E.L.A., supra; P.R.P. v. E.L.A.,* 115 D.P.P. 631, 636-637 (1984).

19. As is known, the equal protection clause does not prohibit all unequal treatment, but rather unjustified

unequal treatment. *Zachry International v. Tribunal Superior, supra,* at p. 277; *Williams v. Rhodes, supra,* at p. 10. The law must necessarily treat similarly situated persons unequally. *Calo v. Cartagena,* 91 J.T.S. 78.

20. In this context, both in federal and Puerto Rico cases which have challenged requirements for registering new parties or independent candidates, the United States Supreme Court and the Puerto Rico Supreme Court have ruled that independent candidates and organizations aspiring to become parties are not similarly situated in relation to established parties. We shall see.

In the first place, the Puerto Rico Supreme Court has pointed out the importance that political parties have in a democratic system. Hence, in the case of *P.I.P. v. C.E.E.,* 120 D.P.R. 580 (1988), the Court opined that:

> "It is also deemed that political parties have come to assume an ever broader and more important role in the daily functioning of modern States and that there is a correlation between the party system and constitutional laws . . . [Cites ommitted] . . . The citizen rarely participates as an isolated individual and does so instead as a member of complex social formations. From the sociological point of view, parties present themselves as spontaneous organizations characterized by a community of conceptions or political interests".

Id., at pp. 616-617.

21. Likewise, in *P.R.P. v. E.L.A., supra,* it stated that " . . . [i]n our democracy, political parties are indispensable for their functioning . . . They constitute the citizenry's collective vehicle of expression to peacefully

channel the various political tendencies and interests of the country's diverse sectors of opinion . . . " *Id.*, at p. 638. See, also, Justice Rigua's Concurring Opinion in *García Passalacqua v. Tribunal Electoral*, 105 D.P.R. 49, 74[6] (1976); *Sánchez Vilella v. E.L.A., supra*, and *P.R.P. v. E.L.A., supra*, at p. 640.[7]

22. In the second place, [in] cases in which statutes establishing classifications between established parties and those which have not been registered as such, both courts have recognized that it is not until the point at which the petitioning group has satisfied all the requirements demanded by electoral laws for its registration, that said party qualifies for treatment equal to that of traditional parties. *P.R.P. v. E.L.A., supra.*[8]

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[6] The electorate has popular sovereignty, makes it effective through political parties, and the latter, upon coming into power, form the government. The government shall always remember that the will of the people is the source of public power and that its power emanates therefrom. What elections do is to legitimize the exercise of that power. One can see why the function of political parties is considered fundamental in the modern democratic system".

[7] " . . . Political parties are movements that join together citizen interests. The backing necessary to register and confer official franchise on a party by petition, in and of itself is sufficient for that condition to take full effect. To deny that equality *ab initio* is to refuse to recognize that reality".

[8] In this case, there was a challenge to certain provisions of the Electoral Act that denied representation of a party by petition at the Permanent Registration Boards and participation in the Electoral Fund. In abrogating these provisions under the Equal Protection Clause, the Puerto Rico Supreme Court stated that: " . . . The classification based on major parties and parties by petition is unsustainable under any juridical analyses. It

On the other hand, in *Jennes v. Fortson, supra,* regarding the differences between established parties and those which aspire to be established, the highest federal forum stated:

> "The appellants' claim under the Equal Protection Clause of the Fourteenth Amendment fares no better . . . The fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other. Georgia has not been guilty of indivious [sic] discrimination in recognizing these differences and providing different routes to the printed ballot. **Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike . . .** "

Id., at p[p]. 1975, 1976.

23. Furthermore, case law has held that the State has an important and legitimate interest in having parties wishing to be registered demonstrate that they have significant support from the electorate. *Adorno Ouiles v. Hernandez, supra* and that those candidates who are elected represent a majority of the electorate. *American Party of Texas v. White,* 94 S.Ct. 1296, 1307 (1974); *Jennes v. Fortson, supra,* at p. 1976, thereby preventing the elector from

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unduly affects electors of that organization. The trial court correctly ruled that **'once a party has been recognized and granted electoral franchise,** an unequal treatment in matters of representation on the various organisms created in the Electoral Act or in matters of government financial assistance cannot be validly sustained' . . . " *Id.,* at p. 641. (Emphasis ours).

becoming confused when choosing among multiple candidates on the ballot. Finally, the State also has the interest and duty to see to the integrity of the electoral process and prevent fraudulent or frivolous candidacies. *Id.; Storer v. Brown, supra,* at p. 1280; *Lubin v. Panish,* 94 S.Ct. 1315, 1320 (1974).

24. From all the foregoing it can be drawn that the CAP cannot prevail in its contention. We shall see.

In the first place, as to the specific requirement of notarizing registration petitions of the new party, federal case law endorsed its validity in *American Party of Texas v. White,* 94 S.Ct. 1296 (1974). In this case, Texas electoral law required that the party's registration petitions be notarized. The United States Supreme Court ruled that the requirement to notarize the registration petitions was valid. *Id.,* at pp. 1309, 1311. The fact that each state regulates the notarial profession differently was not relevant to the ruling on the case before the Court.

We cannot agree with plaintiff's contention to the effect that the fact that Texas does not require notaries to be lawyers is grounds to conclude that the requirement to notarize petitions is only constitutionally valid when the law does not require public notaries to be lawyers. Neither the requirements of Texas for the practice of a notary nor those of any other state have been contested in the aforesaid cases.

25. In Puerto Rico, public notaries are the functionaries entrusted with guaranteeing the authenticity of the signatures made before them, through the notarized certification. Art. 2, Puerto Rico Notarial Act, 4 L.P.R.A. 2002.

26. In passing, it should be pointed out that on November 15, 1978, for the purpose of amending the Electoral Act, the Legislation enacted Act 4. Through amendment, there was added to Art. 3.001 of the Act the requirement that registration petitions for parties by petition be sworn to before a notary public. The Report of the Government Committee of the Puerto Rico Senate as to House Bill 896, stated that:

> "Inadvertently, when considering and enacting the current Electoral Act, the requirement that petitions to register parties by petition be sworn to was not included . . . The requirement of having registration petitions of parties by petition sworn to establishes a guarantee of the truthfulness of the elector's intention as expressed on the petition, and protects purity in the procedure of registering parties . . .
>
> Our political history is full of example [sic] in relation to parties that either did not succeed in becoming registered, or that, having done so, did not maintain their status for very long, thus showing that they lacked solidity and importance, desirable qualities in a solid and stable democratic system such as that of Puerto Rico. By way of example, we can mention the Authentic and Proletariat Parties (1944), the Criollo Party (1952), the "The Voice of the People" Party (1960), the American Reform and Puerto Rican United Front Parties (1968), and the Authentic Pro-Sovereignty Party (1972) . . . "

Id., to pp. 3, 5.

For its part, the Report of the Government Committee of the House of Representatives summarized the State's interest in enacting this provision: "The request

for registration petitions of parties by petition to be sworn to, establishes a legally authorized authentication of the truthfulness of the elector's intention to create a new party that will represent the political interest of a sector of the People of Puerto Rico and guarantee the purity of the procedure". *Id.*, at p. 3.

Consequently, the requirement that public notaries be those who swear in the registration petitions certainly satisfies the State's important interest in preventing fraudulent and frivolous candidacies, that the signatures on the petitions be reliable and that political organizations demonstrate that they have the support of the electorate.[9] *American Party of Texas v. White, supra; Storer v. Brown, supra; Jennes v. Fortson, supra.*

27. Even though it is true that traditional parties can use Commission staff to administer oaths at registrations for primaries, this fact does not constitute discrimination based on political ideology, nor unequal treatment. The CAP is not equally situated with respect to the traditional parties, because of the fact that it has not been

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[9] To this effect, the comments of Associate Justice Martin, in his Concurring Opinion in the case of *Fuster v. Busó*, 102 D.P.R. 327 (1974), are interesting: " . . . The State has a right to demand the existence of a substantial backing of the electorate toward a political party in order to protect itself from frivolous or numerous candidacies. During the meetings of the Constitutional Assembly there were comments in the sense that democracy is weakened by the proliferation of parties and the artificial preservation of parties that lacked [sic] sufficient electoral strength, with the consequent fractionalization of political liability toward the public, since the multiplication of small political parties enfeebles them from expressing their opinions . . . [Cites omitted . . .]" *Id.*, at p. 353.

constituted as a party by petition, pursuant to the provisions of the Electoral Act. The requirements for fulfilling all legal requirements of candidacies and for the holding of primaries apply solely to already established parties, but not to political organizations. 16 L.P.R.A. 3156, 3159. Once the CAP is registered as a party, by following the same requirements that have been followed by other political groups that aspire to become a party by petition, it will be in an identical situation with the political parties and may use Commission staff to administer oaths with the petitions of its primaries.

28. Furthermore, all the organizations aspiring to become parties, not only those whose ideologies are analogous to those of the CAP, have to satisfy the same requirements for their registration as parties by petition. As we mentioned above, a substantially onerous requirement is not inexorably equal to an unconstitutionally onerous one.

29. Observe that the Electoral Act offers other alternatives in order to get onto the ballot, such as independent candidacy, 16 L.P.R.A. 3177, or the write-in vote, 16 L.P.R.A. 3210. The United States Supreme Court supported its decision, validating as reasonable certain requirements for registering a political organization as a party, in the fact that there are alternatives for expressing an ideology on the electoral ballot. *Jennes v. Fortson, supra.*[10] Therefore, it cannot be said that the Electoral Act,

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[10] "Anyone who wishes, and who is otherwise elegible [sic], may be an independent candidate for any office in Georgia. Any political organization, however new or however small, is free to endorse any otherwise elegible [sic] person as its

through its requirements, completely shuts the doors to expression of non-traditional ideologies.

30. Nor can the court ignore the important interest of the State in having only validly registered parties share in the Electoral Fund. 16 L.P.R.A. 3114, 3115. Certainly, it is essential to the State that available government resources be distributed among those organizations that actually have the electorate's support; to wit, political parties as defined in the Electoral Act. On this point, the Report of the Government Committee of the House of Representatives of October 24, 1978, regarding H.B. 896, *supra*, stated:

> "A factor of great importance which should be considered in enacting this Bill, is the provision of the current Electoral Act regarding the electoral Fund. Inasmuch as that fund is a part of the public treasury, we must safeguard that sharing therein not be surrendered to parties by petition which have been fraudulently registered and on the contrary, that it be shared with that party that has the endorsement of a

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candidate for whatever elective public office it chooses. So far as the Georgia election laws are concerned independent candidates and members of small or newly formed political organizations are wholly free to associate; to proselytize, to speak, to write, and to organize campaigns for any school of thought they wish. They may confine themselves to an appeal for write-in votes. Or they may seek, over a six-months' period, the signatures of 5% of the elegible [sic] electorate for the office in question . . . in a word, Georgia in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life . . . "

genuinely interested sector and which was lawfully registered as a new party."

Id., at p. 3.

31. Finally, the State also has an important interest in avoiding the accumulation of multiple registration petitions at the Commission, close to the deadline for parties to register. The State has to work with its limited resources so that, gradually, such petitions as have properly fulfilled all legal requirements may be examined. For that reason, we cannot conclude that the seven-day term established by the Electoral Act for fulfilling legal requirements of registration petitions is unreasonable or excessively onerous.

Therefore, the Court denies the motion for summary judgment filed by plaintiff. On the contrary, it enters judgment summarily dismissing, in all its parts, the complaint in the above-captioned case.

TO BE RECORDED AND NOTICE SENT.

Given in San Juan, Puerto Rico, this 21st day of January, 1999.

[signed]
CARMEN RITA VELEZ BORRAS
SUPERIOR COURT JUDGE

I certify: Carmen López
Chief Clerk

By: *[sgd.] S Carrasquillo*

United States District Court
For the District of Puerto Rico

- CERTIFIED -

To be a correct translation prepared by:

/s/ Illegible

Certified Court Interpreter
Administrative Office of the
United States Courts

IN THE SUPREME COURT OF PUERTO RICO

Civil Action Party

Petitioner

vs. NO. AC-1999-20 Certiorari

Commonwealth of Puerto Rico, et al

Appellee

JUDGMENT

San Juan, Puerto Rico, April 25, 2000.

Based on the foundations set forth on the preceding opinion, which is made an integral part of the document at hand, we deny the Motion to Reconsider.

It is so pronounced and ordered by the Supreme Court and certified by the Clerk by the Supreme Court. Associate Justice Negrón Garcia issued the Dissenting Opinion. Associate Judge Naveira de Rodón dissented without written opinion.

[signed]
Isabel Llompart Zeno
Secretary of the Supreme Court

IN THE SUPREME COURT OF PUERTO RICO

Civil Action Party

Petitioner

vs. NO. AC-1999-20 Certiorari

Commonwealth of Puerto Rico, et al

Appellee

JUDGMENT

San Juan, Puerto Rico, April 25, 2000.

We rule the Motion for Reconsider presented by the Civil Action Party of our Judgement in *Civil Action Party v. Estado Libre Asociado, et al,* res. February 25, 2000, 2000 T.S.P.R. 29, which sustained the constitutionality of Articles 3.001(3) and 3.002 of the Electoral Act, Act No. 4 of December 20, 1977, as amended. 16 L.P.R.A. ss. 3101(3) and 3102. With the benefit of the appearance of the parties to the oral argument, as well as the pleadings and documents submitted, we deny the Motion for Reconsideration.

I

On February 25, 2000, by the Court's Opinion, we sustained the constitutionality of Articles 3.001(3) and 3.002 of the Electoral Law, Law No. 4 of December 20, 1977, as amended. 16 L.P.R.A. ss. 3101(3) and 3102. We

conclude that such provisions requiring a notary to certify the endorsements for political groups aspiring to become parties by petition, and that the petitions be presented before the State Elections Commission within seven days of collection, do not violate the constitutional doctrine of access to ballot. In addition, we state that the referred provisions do not violate the Equal Protection clause, either.

In a timely fashion, the Civil Action Party filed a Motion for Reconsideration in which it requested us to declare the unconstitutionality of the challenged provisions for considering, as a constitutional minimum, the application of *Meyer v. Grant*, 486 U.S. 414 (1988) and *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999).

In addition, they filed a Request for Oral Argument, to which we agreed. Simultaneously, we granted the parties a term to appear and enlighten this Curia, regarding the alternate remedies and the feasibility of officials to notarize the endorsements for petition.

In its appearance before us, the Civil Action Party argued that under *Meyer, supra* and *Buckley, supra*, the only alternate mechanism constitutionally allowable is the use of volunteers who are not attorneys for the collection and notarization of the endorsements.

The Commonwealth and the State Elections Commission pointed out that, in attention to the important interest of addressing the integrity of the electoral process, only officials with a degree of veracity on the certifications they notarize which was analogous to a notary public, could be considered as alternate officials in the

notarization of the endorsements for parties by petition. Such officials are, according to the Attorney General and to the State Elections Commission, the judges of the Judicial Branch and the Clerks of the Courts.

They also pointed out the consequences that new political parties represent to the financing and operation of the Puerto Rican electoral apparatus. According to the Commission, the operational cost of the electoral system is approximately forty million dollars for each Party during a four year term and each new Party represents another amount. This quantity is deducted from the Electoral Fund, in addition to the operational costs that each new Party implies: an Electoral Commissioner with its assistants; a representative on each one of the Permanent Registration Boards, with their equipment and work space, eight supervisors and the personnel of balance.[1]

In regards the electoral history of the Civil Action Party, the Commission certified that the Civil Action Party had been certified on May 20, 1998, and by March 25, 2000 only thirty five (35) endorsements had been filed, from which thirty (30) were validated and five (5) were rejected.

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[1] During the Oral Hearing, the Court ordered the State Elections Commission to submit documents relevant to the budget of the Commission and regarding the groups requesting to be certified, to begin the registration process as a Party by Petition since 1983 to the present.

From the documents submitted by the Commission in compliance of the Order, it appears that the annual cost of representation of a political Party in the different structures of the Commission is $5,600,477.00 for each non-election year and $13,800,477.00 for each pre-election year.

The Commission also certified the Social Unity Labor Party, which was certified on March 15, 1998, two months before the Civil Action Party, by March 29, 2000, had presented a total of 33,769 endorsements, from which 29,894 were validated, 1,139 were rejected and 2,736 were pending their validation.

II

The hearing requested by the Civil Action Party took place on March 31, 2000. The parties had the opportunity to make their exposition, as well as to answer the questions submitted by this Curia, and to refute the argument presented by the other Party.

The purpose of holding this hearing was to give the Civil Action Party the opportunity to show the actions taken in the registration process, so that, in accordance with their efforts, we could re-examine whether the requirement of the notary intervention is severe or onerous.

Cautiously examining the appearance of the Civil Action Party, as well as their answers to our questions, and their expressions on the rebuttal turn, it is unavoidable to conclude that it has not demonstrated that a reasonable diligence was done to obtain the registration of the Party. Further, the record shows an absence of minimal degree of effort, as well as a tendency to depend exclusively in litigation, with the purpose of obtaining the registration of the Party.

(A) Endorsement collection

During the hearing, the Court specifically inquired about the steps and efforts made by the Civil Action Party to achieve its registration.

One of the principal arguments of the Civil Action Party was that the actual system prevents the president of the Party or his family and friends to collect the endorsements, since the notaries are the ones who do this. It indicated it had six (6) sworn statements from lawyers sustaining that it would be onerous for them to abandon their practice in order to authenticate the required endorsements. The State Elections Commissions pointed out that the Civil Action Party did not provide evidence that the endorsements could not be collected because the notaries refused to do it.

On the other hand, the Commission distinguished between the collection of endorsements and the authentication of the signatures of the endorsees. The members or volunteers of the Party may request or collect the petitions, nothing prevents them from doing so. Now, once the endorsee agrees to grant the endorsement, they have to sign it in the presence of a notary public.

The Commission pointed out, and the Civil Action Party accepted, that as of the date of the hearing, the Party had only submitted thirty (30) valid petitions to the Commission. Such petitions were submitted on September, 1998. The attorney for the Civil Action Party clarified that he was the person who collected and notarized the petitions during a period of four hours. The Civil Action Party accepted that, from that date on, no action was

taken to obtain other endorsements, focusing its efforts in challenging the validity of the Electoral Law in court.

The State Commission also stated that even though this Court acknowledged the right of the Civil Action Party to obtain, by payment, copy of the electoral lists, *Civil Action Party v. Comision Estatal de Elecciones*, res. September 27, 1999, 99 T.S.P.R. 145, from the date of the hearing, the Party had not requested them from the Commission[2]. The Civil Action Party responded that they did not request for the electoral lists because of their cost, and the fact that this matter was intimately related to the issue in the case before this court.

(B) The electoral basis of the Civil Action Party

The Court inquired about the electoral basis of the Civil Action Party, that is, the popular support of the political group. The Civil Action Party stated that in Puerto Rico, there are four hundred thousand (400,000) non-registered voters who could constitute its support or electoral basis. They also stated that because its platform promotes the formula of free association, they could count on the support of four thousand (4,000) of the voters who voted for this alternative in the 1999 plebiscite. Finally, it stated that, a survey, which took

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[2] The legal representative of the Civil Action Party argued that they had not gathered the electoral lists because the Commission was charging them eight thousand dollars ($8,000.00) for them. The legal representative of the Commission answered that, that was the amount that was collected from anyone requesting the lists and that such was the amount of the cost for reproducing them.

place before the 1998 plebiscite, revealed that the free association formula counted with the support of fifteen percent (15%) of those surveyed.

On the other hand, the State Elections Commission pointed out that the Civil Action Party, in addition to only submitting thirty endorsements, did not even file a list of the voters supporting them, as evidence of their electoral power[3].

(C) The difference in the regulation of candidates for primaries or independent candidates and the political groups interested in registering as a political Party.

The Civil Action Party requested to be able to use *ad hoc* notaries for the certification of the petitions. The Court inquired what were the reasons to allow the utilization of *ad hoc* notaries in the case of candidates for primaries and independent candidates, and not in the case of parties by petition.

The Commission pointed out that there is a fundamental difference between the consequences that each process entails. The fundamental difference rests upon the groups wishing to be certified as political parties, once they submit the correspondent endorsements and are validated, they have some rights and prerogatives that a independent candidate or a candidate for primaries

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[3] We must state that the only thing on record that we could interpret as evidence of the popular support the Civil Action Party has are ten sworn statements of persons who are members of the Civil Action Party wherein they stated that they were willing to collect endorsements to register the Party.

does not have. They stated that it is important to emphasize the fact that once a Party achieves its registration, they have a right to public funds. For example, they have the right to participate of the Electoral Fund[4], they have the right to an Electoral Commissioner and to a representative in each of the Permanent Registration Boards, employees whose salaries are paid out with public funds. They pointed out that, that was so, because in Puerto Rico, as opposed to other American states, the political parties are subsidized with public funds.[5] On the contrary, a candidate for primaries or an independent candidate does not have such rights.

The State Elections Commission also stated that the difference in the treatment is justified because the term that the independent candidates and candidates for primaries have to submit the endorsements required by law is two months. On the contrary, the political groups aspiring to the certification as a political Party have a period of three and a half years to submit the correspondent endorsements.

Finally, the Commission indicated that the only sieve that exists in the case of endorsements for political groups in the process of registration as a Party, is the

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[4] In spite of the various occasions during the Hearing that the Civil Action Party stated the need and importance to participate in the Electoral Fund, client to waive its participation in the Electoral Fund [sic].

[5] The Commission reiterated, in its argumentative exposition what it had stated during its appearance regarding the cost that a new party represents to the public treasury.

certification by the notary. In contrast, regarding the candidates for primaries and independent candidates, there are certain sieves or additional filters. That is, for example, in the case of candidates for primaries, the Party to which it pertains is already a registered Party, that is, they have support from the voters. The candidate for primaries goes through, in first place, the internal process of its Party, in which he or she has to demonstrate that they count with a significant support through the votes of the voters of that Party. If they are victorious in the primaries they go through the final sieve of the general elections.

(D) Remedy Requested

The Civil Action Party expressly rejected the remedy that the judges or clerks of the court authenticate the signatures of the endorsees. They also rejected the alternative proposed in the Dissenting Vote of the Associate Justice Negrón Garcia in *Civil Action Party v. E.L.A.*, Judgment entered on October 27, 1999, 99 T.S.P.R. 163, to use employees from the Permanent Registration Boards of the Commission to act as *ad hoc* notaries. The Civil Action Party requested permission to certify the endorsements by members of the Party, without the need of notaries or public officials to intervene in the process. It rationalized that the State has various mechanisms to fight fraud, such as the penal judgement for fraud or perjury and the possible disqualification of the candidate or Party that obtains the registration fraudulently.

III

By a detailed examination of the record, as well as the appearance of the Civil Action Party at the Oral Hearing this March 31, it is imperative that we conclude that the Civil Action Party has not demonstrated having a genuine interest in achieving the registration of its group as a Party.

Several facts move us to this conclusion: that in the period since its certification until today, it has submitted before the Commission thirty (30) validated endorsements, which, by its own admission, were certified by only one notary during the period of four hours; that after litigating the matter of the electoral lists before this Court, with the effort and cost that it entails as much to the parties as to the judicial system, the copies have not been claimed; the absence of a list of registered voters willing to endorse the Party; the "resignation" at the last minute and as a last resource to the participation of the Electoral Fund; its refusal to consider alternate mechanisms to the certification of the endorsements by notaries, that being public officials, have a higher degree of reliability than the members of their own Party. All this, makes us determine that the Civil Action Party has not shown a reasonable diligence in the defense of the concrete interest it seeks to litigate.

The petitions of endorsement presented by the Civil Action Party before the Commission represent. 003% of the 97,784 endorsements required for its registration. Using the numbers submitted by the legal representative of the Civil Action Party, so that in four hours, he collected and notarized thirty (30) valid endorsements, a

simple mathematical calculation shows that nine (9) notaries certifying endorsements during eight (8) hours a week, would have been able to notarize 98,280 endorsements during a period of three and a half years, term required by the Electoral Law for the registration of Parties by Petition.

We also want to point out that, in Puerto Rico, there are one hundred and four (104) electoral precincts. Just by using two notaries per precinct and each one certifying five hundred endorsements to collect 104,000 endorsements, exceeds the number of endorsements required. For this assignment, they would count on, of course, three years and a half required by the Electoral Law.

Also, from the evidence presented in the hearing, we conclude that the electoral basis which the Civil Action Party alleges it has is abstract and hypothetical. With the exception of ten sworn statements on record, in which ten members of the Party express their willingness to collect endorsements, the Civil Action Party has not demonstrated that it has the support of identifiable persons or groups, which is necessary for any political group aspiring to become a political Party and present their candidates to the nation.

IV

Finally, it is our duty to analyze the argument of the Civil Action Party, in which the federal cases *Meyer, supra* and *Buckley, supra*, apply to this case. We conclude that such jurisprudence does not support the thesis of the Civil Action Party, and is clearly distinguishable from the

situation before us. We should state that, as opposed to the case at hand, in *Meyer, supra* and *Buckley, supra,* the Petitioners presented extensive evidence before the Court of First Instance, with the purpose of demonstrating the efforts made, and how the challenged requisites were extremely onerous.

The cited jurisprudence is not about the regulation of political associations in its effort to achieve access to the ballot, but to the regulation of proposals of citizen initiative, as allowed in the state of Colorado[6]. In both cases, the Federal Supreme Court invalidated certain requirements demanded from the collectors of endorsements for initiatives of popular legislation, considering that they violated the right of free speech guaranteed by the First Amendment of the Federal Constitution.

In *Meyer, supra* as well as in *Buckley, supra,* the Court concluded that the restrictions imposed significantly restricted the communication with the possible voters, since it, impermissibly, violated the direct political communication (one on one communication), limited the number of persons who could carry out the involved

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[6] In *Meyer, supra,* the Federal Supreme Court invalidated a provision that prohibited the collectors of endorsements to lobby for popular legislative initiatives receiving financial compensation. In *Buckley, supra,* the requirement for the endorsement collectors to lobby for popular legislative initiatives to be registered voters; to be required to use clothing identifying their names; and that obligated the proponents of the popular legislation to report the name and address of the endorsement collectors and the amount of money paid for their work.

political message, and consequently, limited the audience to which the message could reach.

In the case before us, the challenged provisions do not restrict the freedom of speech of the members of the Civil Action Party. There is nothing in them that imposes restrictions regarding the persons who can carry out the political message outlined by such Party to convince the registered voters to endorse the petitions for registration, or who can act as collectors of endorsements. The members of the Party have complete liberty to make the expressions they believe necessary, as well as to broadcast its political message by the means they consider convenient. Likewise, nothing prevents them from directly communicating with possible voters, that is, to approach possible voters to communicate their political platform, request their support and ask them to fill out the endorsement petitions. All of these functions, which are an integral and central part of the political expression, are available to all members of the Party; they are not restricted to the notaries.

By statutory provision, the function of the notary is not limited to the oath of the petitions for registration. That is, the intervention of the notary is limited to the form in which the endorsement should be carried out. The members of the Civil Action Party, may fully exercise their right to political expression, contrary to *Buckley, supra*. They are not prevented to approach citizens to transmit their political message and try to obtain their support to achieve the registration of the Party. In fact, there is no requirement limiting the capacity of the member of the Party to fill out and collect the necessary endorsements, with all the pertinent information, except

for the signature of the person. Once the citizen shows his desire to help in the registration, it corresponds to the collectors of the Civil Action Party, in accordance with the requirement of the Electoral Law, to make the actions so that the endorsement is notarized.[7]

In the case of *Buckley, supra*, the Concurrent Opinions of Judge Thomas and Judge O'Connor, to which Judge Breyer joined, acknowledge that there is a difference between the provisions having the effect of directly regulating the communicative aspect of the petitions, and those which merely regulate the mechanisms of the electoral process. *Id.* Pages 208 and 214.

> Some regulations govern the electoral process by directing the manner in which an initiative proposal qualifies for placement on the ballot. These latter regulations may indirectly burden speech but are a step removed from the communicative aspect of petitioning and are necessary to maintain an orderly electoral process. Accordingly, these regulations should be subjected to a lesser standard of review. Id. Pages 214. (O'Connor, Op. Concurrente)

Furthermore, the Opinion of the Court in *Buckley, supra*, acknowledged that the existence of a substantial regulation of the electoral process is necessary, if it is

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[7] For this, they can use different methods: they may either send or take the voters to the offices of the notaries, they may have a notary go with them in endorsement collection campaigns; they may place themselves together with other personnel carrying the political message and requesting endorsements in strategic places and with public access, and they may have notaries swear the endorsements simultaneously, etc.

going to be a fair and honest one, and that the states have ample discretion to protect the integrity of the electoral process. *Id.* Pages 185 and 191. It expressly pointed out that, citing the preceding jurisprudence, the risk of fraud and corruption existing in the election of candidates, is not present in the votes of popular legislation proposals. *Id.*, page 203.

V

In attention to the aforementioned, we confirm our preceding determination that the challenged provisions of the Electoral Law do not have any constitutional defect.

Furthermore, the documents presented by the State Elections Commission in compliance with the Order given in the Oral Hearing by this Court, show that the challenged provisions are not as onerous as to prevent a political group from **demonstrating a reasonable degree of diligence**, to achieve access to the ballot.

According to the Statement Report of Parties by Petition filed before this Court this last April 5, since 1983 to the present, ten political associations requested their certification before the Commission to start the registration process as a Party. From these ten, three achieved their registration and participated in the electoral process: Puerto Rican Renovation Party, island-wide in the elections of 1984, Local Viequense Movement as a local Party in the elections of 1992, and the Frente Unido Riograndeno Party as a local Party in the elections of 1996.

Out of the seven remaining political associations, one, Democratic Representative Interest Party, has not been able to achieve the certification of its name and emblem, this matter still pending litigation in the courts. In relation to the other six political groups, two are presently pending their registration: Social Unity Workers Party which has filed 34,561 endorsements, and the Civil Action Party which has filed 35 endorsements.

The remaining four political associations did not achieve their registration to participate in the 1996 elections. Out of these four, it is necessary to point out that three of them did not file any petition whatsoever: Alternative Party, which was authorized to collect endorsements in December, 1993, National Union Party and the Puerto Ricans for Puerto Rico Party, which were authorized to collect endorsements on February, 1996. The remaining group, Puerto Rico Reformist Party, which was authorized to collect endorsements on October, 1993, presented 1,248 petitions out of the required 94,094, meaning a 1.32% of the required endorsements, in spite of having more than two and a half years to show that it had the voters support.

We should also, take into consideration, the fact that the State subsidizes the political parties through the Electoral Fund, and the cost that the participation of each Party's operational scheme of the State Elections Commission entails. In our jurisdiction, once the political groups achieve their registration as a Party, they have the right to participate in the Electoral Fund. Such amount is fixed by law, regardless of the amount that the Party can collect on its own. That is, once the number of required

endorsements is satisfied, the parties participate in equal conditions.

Even though there are diverse mechanisms of public financing for the campaign, in our case, the system provides funds in political block to the registered parties. With the purpose of guaranteeing that the subsidy is used only by the political groups that have real power to summon our voters, the Electoral Law contains certain minimum requisites of eligibility. In that sense, it states:

> Any program that gives away taxpayer money must include some standards to determine who qualifies for the money. Because one of the goals of almost all public subsidy programs is to make it easier for more candidates to run for office, the qualifying provisions cannot be onerous. **If it is too easy to qualify, however, the program runs the risk of losing credibility when, for instance, a marginal candidate makes a career of losing elections at public expense or simply too many candidates flood the system. Eligibility requirements may be less crucial in matching fund and rebate or credit programs than they are in block grant programs because the candidate's subsidy is subjected to a kind of ongoing market test – the candidates will benefit from public money only if they are able to raise money on their own.** Daniel, Elizabeth, "Subsidizing Political Campaigns: the Varieties and Values of Public Financing", *Brennan Center for Justice, http://.brennancenter.org/resources/*
>
> Resources_cfrseries.html. (our emphasis).

In addition, once a Party is registered, it has the right to designate an Electoral Commissioner and an Alternate

Commissioner, and to participate with voice and vote in the deliberations of the State Elections Commission. Also, they have the right to have a local Commissioner in each electoral precinct and to have the support personnel that is ordinarily part of the representation of the parties in the different dependencies of the State Elections Commission. Electoral Act, as amended, Art. 1.004 et seq., 16 L.P.R.A. sec. 3004 et seq. In fact, the registration of a Party converts it in part of the governmental organism that leads the electoral process and therefore acquires quasi-public functions of great importance in our democratic system. *P.R.P. v. E.L.A.*, 115 D.P.R. 631 (1984); *Fuster v. Busó*, 102 D.P.R. 327 (1974). The challenged requirement in the case at hand provides a mechanism so the State can make sure that the groups constituting part of this directive body show that they really constitute a Party representing an important sector of the electorate with the right to participate in the deliberations of that governmental organism.

Finally, we should point out that the requirement of the notary certifying the endorsements, taking into account the history of political fraud in our jurisdiction, what it precisely seeks, is to offer a guarantee of reliability that makes it unnecessary to take the drastic measures proposed by the Civil Action Party to protect the purity of the electoral process, such as the certification of a candidate or a Party, even after the elections take place.

If we consider from the hearing, it appears, that since 1998 to the present, the Petitioners have dedicated only four hours to the effort of collecting endorsements, it is highly questionable and worrisome that through the

requested remedy, expects us to declare unconstitutional some of the sections of our electoral scheme that precisely have the purpose of avoiding the registration of parties lacking popular support.

For the reasons set forth above, we deny the Motion for Reconsideration.

The corresponding Judgment shall be entered.

IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil

Petitioner

No. AC-1999-20

v.

Commonwealth of Puerto Rico, et al.

Respondents

Dissenting Opinion of Associate Justice Mr. Negrón-García

(In Reconsideration)

San Juan, Puerto Rico, on April 25, 2000

For its precedent value and repetitive character, this appeal goes beyond and transcends the constitutional rights of the voters who make up the Partido Acción Civil (PAC).

The burdensome legislative requirement that individually forces the voters to go to and swear before lawyers-notaries their registration endorsements, has subordinated the creation of any political party to that professional group.

It is an elitist and irritating privilege. On its face and operationally it is unreasonable and unconstitutional, because it gives in an absolute manner to this professional group, in its critical initial stage, the exclusive prerogative of giving efficacy and legal virtuality to the rights of speech, association and suffrage of the voters. *The electoral will turns into notary will.*

The result is that, inconceivably, in the Puerto Rico of today and of tomorrow, the recognition of the paternal relationship in the birth and registration of a new political party, is ultimately of a *notarial nature, not electoral.*

To hand over and leave only in the hands of lawyers-notaries such a valuable right is not justified as the only measure against fraud, as there are less onerous ones. Particularly, in the name of an imaginary and nonexistent legislative tradition that, in practice, only benefits the hegemony and perpetuity of the main political parties that have dominated the electoral and ideological stage for more than half a century.

The State cannot imprison in the privilege of a professional class these constitutional rights, or asphyxiate in a time capsule the citizens' electoral aspirations (little or big ones in its beginnings, few or many economic resources), of achieving an electoral franchise.

I

Article 3.001(3) of the current Electoral Act – Number 4 of November 15, 1978 – mandates that the endorsement of a voter promoting a new political party be performed only through a petition sworn before lawyers-notaries.[1] **Its text does not obligate, expressly or implicitly, any lawyer-notary to ministerially carry out this function.** If he, in his discretion, chooses to do so, in or outside his office, by payment of one dollar, he should thereafter prepare and submit four reports: the first one to the State Elections Commission, and another every fifteen days, again to that organism. He must also transcribe, by hand, each endorsement in his Affidavits Book, and include them in the monthly notary index, which shall be submitted to the Protocols Inspector Office. **The Electoral Act does not provide either for officials, mechanisms or alternate ways that make viable these endorsements in a different way.** ***Formerly, this absolute electoral monopoly of the professional class of lawyers-notaries did not exist; now, simply put no one else can do it, there are no other options.***

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[1] Establishes:

Any group of citizens who, with the purpose of appearing on the Elections ballot in any General elections shall be considered a "Party by Petition", if they are registered as a public party **on or before June of the election year**, by filing, before the Commission, sworn petitions for such purpose, **before notaries public admitted to the practice**. . . . , who shall receive from the Elections Commission, the amount of one (1) dollar for each valid notarized petition as fees, signed by a number of voters of no less than five (5%) percent of the total votes deposited for all the candidates to the office of Governor in the prior elections. . . . " (Our emphasis)

Discriminatory and unreasonably, the requirement is imposed only to the voters wanting to found new island-wide or local parties. **It is not demanded for independent candidates, internal primaries, presidential primaries, or plebiscites.** According to the *Report of the House Government Committee* the requirement "establishes a guarantee of veracity of the voter's intention expressed in the petition and protects the purity in the procedure of registration of parties." The Commonwealth and the State Elections Commission argue that this safeguard promotes the compelling interest of preventing fraud and of assuring that there is an authentic showing of electoral support or base.

Preventing fraud, we recognize, is a compelling interest present and applicable *to every step and stage of any electoral event*, whether they are elections (general or special), primaries, plebiscites, referenda, etc. The political parties are vehicles of expression, through which citizens show their support or opposition to the different governing programs, and at the same time, strengthen democracy by proposing candidates to public office. The constant active participation and reciprocal supervision of its members inserted in the electoral administrative structure, as representative officers, imparts trustworthiness, purity and makes possible the orderly and fair holding of the electoral events. When obtaining their franchises they obtain the status of quasi-public bodies inside the constitutional structure and in the operation of the government. Such important functions require a serious sieve that prevents a group, through fraud, obtaining these valuable prerogatives and responsibilities.

But in cases as the present one, the State has gone beyond what is necessary in its zeal and protection against fraud. In its forensic discourse – with the approval of the majority of the Court –, has inverted the values and elevated the budgetary impact that every political party represents to the category of main compelling interest. It accepts that the independent candidates are not required for each of its petitions to be sworn before lawyers-notaries.[2] As indicated, neither is it imposed to the registration formalities of the other events of an electoral nature. Nonetheless, with reference to the independent candidates it bases this difference on the fact that they do not participate in the Electoral Fund, nor do they take part in the administration of the elections. It expounds its main argument in terms of millions of dollars. (*Per Curiam*, pages 3-4).

It thus forgets that the legislative medicinal antidote against fraud is constitutionally contraindicated and cannot be administered if, as an "adverse reaction", it turns into a deadly poison against the democratic

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[2] Art. 4.027 of the Electoral Act provides, in part:

Any person filing before the State Elections Commission petitions for nominations accepted by them in an amount no less than five (5%) of the votes obtained in the last general election by all the candidates to an elective office that such person aspires, shall be deemed an independent candidate.

The independent candidates to office of Senator or Representative by Accumulation shall present petitions for nominations in an amount equal to five (5%) percent of the total votes issued for Governor in the prior general elections divided by eleven 11. Such petitions shall only be signed by voters entitled to vote for the aspired office." 16 L.P.R.A. 3177

health of the citizen electoral body, just because public funds are involved.

The electoral fraud is *malum in se* [bad in itself], because it diminishes the integrity of the vote, which is the yeast that makes our democracy grow or decrease. To avoid it, is a unquestionable compelling interest *with or without electoral funds*. Nonetheless, we reject that the constitutionality of the sole requirement of the public notary faith in the endorsements can be sustained on the basis of the Electoral Fund and the other financial and administrative consequences that fall upon the electoral apparatus. In the constellation of the constitutional values involved – freedoms of speech, association, and suffrage –, the budgetary impact, although important, is a consideration of secondary order to the attainment of an electoral franchise. **For its *subsequent* character, it cannot serve as an *a priori official excuse* to impose early, onerous and different obstacles to the arrival of new political parties.** The argument, wrongly, elevates to a directing principle the economic factor and relegates to an inferior one the right to participate in the electoral processes, which is consubstantial with the aforementioned fundamental constitutional rights.[3]

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[3] The majority (Per Curiam, pag. 9, footnote 4), pinpoints the "verbal and premature" waiver to the Electoral Fund notified by the Attorney for PAC in the Oral Hearing. We say premature because Chief Justice Andreu García stated, PAC may not waive something it is not entitled to.

II

The legislative position of mandating the requirement of endorsement before lawyers-notaries only for parties by petition, puts obstacles and contrasts eloquently with the rest of the present electoral scheme and the recent special legislation wherein the States has been interested in promoting determined electoral events: the plebiscites.

As to those events, the Legislative Assembly has never required the voters to compulsorily go before notaries. Contemporary history reflects a lax and very liberal legislation as to the endorsements, even when the new groups have received special assignments of an analogous nature to the Electoral Fund.[4] They have equally generated disbursements in the administrative structure of the State Commission. We are referring to the Laws No. 1 of December 23, 1966, No. 22 of July 4, 1993 and No. 249 of August 17, 1998 – plebiscites about

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[4] For the plebiscite of 1966, **each group accepting a representation in one of the formulas for the status** had available the amount of $385,000.00, of which $250,000.00 were to be used for general campaign and propaganda expenses; $60,000.00 for transportation of voters and the remaining $75,000.00 for administrative expenses. Act No. 1 of December 23, 1966, Art. 92.

In 1993, $2,700,000.00 for the expenses of political parties and **any certified entity, organization or group** to represent one of the formulas, which shall be divided in equal parties. Act No. 22 of July 4, 1993, Art. 28.

Lastly, the Plebiscite Act of 1998 granted $2,000,000.00 to be distributed equally amongst the political parties or **certified groups** to represent one of the columns. Art. 29, Act No. 249 of August 17, 1998.

our political status –, concerning those formulas that were not represented by the registered political parties. **For those circumstances, the Legislative Assembly encouraged and sponsored the creation of electoral groups.** One of the requirements to be complied with was **the simple presentation of endorsements *not individually sworn before notaries*.** The plebiscite corresponding to 1966 only required a **list with signatures** equal to one percent (1%) of the voters that cast votes in the preceding election for the political party that promoted the status formula to be represented by the group. This list had to be joined by **a sole affidavit** of the Chairman or any other of the directors of the concerned group to the effect that the signatures of the voters were authentic, given to achieve the desired organizational representation and that they had the addresses of each endorser.

For the 1993 plebiscite, the letter of the act only mandated a list of the endorsing voters. In the 1998 plebiscite were compelled signed endorsement petitions, equivalent to no less than 3 percent (3%) of the voters that voted in the plebiscite of 1993 for the status option that received the least number of votes in that consultation. **As a means of swearing them in was incorporated the liberal norm applicable in primaries of *ad hoc* notaries** – voters authorized by the State Commission –, **method that still survives** in Art. 4.011 of the Electoral Act:

> The primaries petition can be sworn, before officials authorized by law to take oaths, as well as by **any voter authorized by the Commission to carry out that function upon request of each primary candidate.**

> "The persons authorized to take oaths regarding the primary petitions **shall be considered as officials of the Commission for all legal purposes**, and shall keep a record of all the persons and the date in which the oath was taken. This record shall be signed and sent to the Commission at the end of the period in which the primary petitions may be filed." (Our emphasis).

It is observed then, that when it is the interest of the Legislative Assembly to promote, make viable, and give temporary representative electoral franchises (not permanent) – and support party primaries –, uses two (2) different and contradictory measures, **even when in all of them the compelling interest of avoiding fraud is identical and of equal intensity**. The same can be said about the fiscal effects. In those circumstances, that interest ceased to be important even though there was a special Electoral Fund, and the new groups had significant budgetary impacts. **The only detectable substantial difference is that it was about events that benefit the partisan interests of the three traditional political parties.**

It is inescapable to conclude that in its electoral treatment the legislative Assembly projects itself as circumstantially versatile: one face, liberal and generous, as long as it is politically convenient; the other face, grim and conservative, if it implies opening the doors to the formation of new permanent political parties.

In support of this differential treatment, the State Commission alleges that the leniency of the endorsements without lawyers-notaries is justified because the plebiscites were electoral events legislatively scheduled

for near dates when there was little time available to mandate them. The same argument expounds with respect to primaries. That, in its judgment, contrasts with the genesis of new parties, for which the voters have potentially three and a half years counting from the last election held.

The differences are more apparent than real. *The Regulation for the Procedures of Filing of Candidacies and Primaries of the Political Parties*[5] requires a candidate in primaries to gather five thousand signatures in a period of two months – from the opening of the period of filing of candidacies on July 1st of the year prior to the election year (Regulation, sec. 3.5), until September 1st of the same year (Regulation, sec. 3.6(b)). **It does not impose, however, the requirement that each one be individually notarized under the premise that this requirement would be too onerous in such a short period of time.**

In its mathematical-temporal dimension, it should be noted **that there is no significant difference between the registration of a candidate to primaries and that of a Party by Petition.** Five thousand (5,000) signatures in two months are equivalent to thirty thousand (30,000) in one year, and these, projected in a span of three and a half years – maximum term that a party by petition has to register – amount to one hundred and five thousand (105,000), amount comparable with the one required to the parties by petition.

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[5] State Elections Commission, May 26, 1999

It is unavoidable to conclude that the requirement of individual notarization of the signatures for the candidates in primaries is onerous – they are the ones who have the advantage of working inside an organized structure and a previously established group –, it is too, with more reason, for the parties by petition.

Nonetheless, the majority by subscribing the argument of the State Commission, expounds its own and peculiar formulas of distribution of notaries that the PAC could and should use to register within the "three and a half years established in the Electoral Act". To that effect, it says:

> "Using the numbers given by the legal representation of the Partido Accion Civil, that in four hours it collected and notarized thirty (30) valid endorsements, a simple mathematical calculus shows that nine (9) notaries certifying endorsements during eight 8 hours a week, would have notarized 98,280 endorsements **during a period of three and a half years, term established by the Electoral Act for the registration of the parties by petition.**
>
> Also it can be observed that in Puerto Rico there are one hundred and four (104) electoral precincts. It would be enough to use two notaries in each precinct and that each one notarize five hundred endorsements to collect 104,000 endorsements, which exceeds the number of endorsements required. **For such task, of course, they would count with the three and a half years established in the Electoral Act."** (*Per Curiam* Opinion, page 12).

The argument is dangerously anti-undemocratic. "It is the essence of the citizens' freedom to change their opinion and express so, accordingly. The electoral process is fundamentally an expression of the judgment of the voters and the same has to be changeable as are the circumstances of life in a country." *Rivera Lacourt* v. *Junta Estatal de Elecciones*, 100 D.P.R. 1023, 1029 (1971).[6]

The mathematical formulas conceived by the majority rest on a static and unreal scenario. Both have, as a starting point, the ideal that the notarization of 97,784 endorsements **begins** in the "three and a half years established in the Electoral Act." We could speculate other formulas that in different moments, and in strict arithmetic, would reflect that possibility; as a reason for deciding, we abstain. **That judicial focus mechanically time bars and freezes the constitutional rights of speech, association and suffrage to the beginning of a four-year itinerary.** It ignores the changing nature of human beings, and of the daily social events that nurture the dynamic vitality of a true democracy. **Civic movements and nucleuses like the PAC, ordinarily are not instantaneous, but product of gradual social phenomena and reactions of the daily and variable Puerto Rican reality as to the good or poor governmental work.** They can emerge immediately, as a result if an election or in any of its following years. In fact, the only restriction of a temporal nature concerning the right of a voter to change her opinion and endorse the registration of new parties, – which constitutionality is not at issue here –, we find it in

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[6] Citation taken from the brief of the General Attorney accepted in this decision.

Art. 3.002(b) of the Electoral Act establishing that the voter could not have "during the immediately preceding two (2) year period signed a petition to register another party."

In terms of four-year temporality, because of the proximity of the general elections – scheduled in Art. VI Sec. 4 of our Constitution for "the day of the month of November determined by the Legislative Assembly" –, only is valid to legislatively argue and impose a valid deadline for such registrations: currently, May 31 of the year corresponding to the general election. **But that does not deny the reality that the PAC and other groups can legitimately appear and form slowly or quickly, in any year of the four-year period, without being able to oppose to the dynamic, free and democratic civic exercise the norm of notarial exclusivity with the majority argument that they were not diligent and, instead of litigating and relying on this writ (*Per Curiam*, page 5), they sould have, to be able to achieve it, begin the registration and notarization of the 97,874 endorsements.**

III

On the other hand, the majority opinion concludes that the PAC "has not demonstrated to have a genuine interest in achieving the registration" as a party by petition. (*Per Curiam*, page 5). It bases this conclusion on several "conclusions of fact" thatwe will expound and evaluate simultaneously. We do so, aware that this Forum – as opposed to when it exercises its original jurisdiction –, is simply exercising its classical appellate power of

review, not acting as a Court of First Instance. Certainly, we will avoid falling into the temptation that the oral argument hearings – with our questions and the answers of the parties' lawyers –, turn into evidentiary ones, for which we have no authority. With this precautionary note, let us examine the factual conclusions if the majority, in light of the original record and the oral hearing.

First, the majority underlines that the PAC has collected only thirty (30) valid endorsements certified by a notary in four (4) hours. (*Per Curiam*, pages 6-7). In contrast to the majority perception, that is not demonstrative of absence of diligence, but of the onerous nature of the requirement for the voters and for the lawyers-notaries. **In the oral hearing this limited action was accredited by the existence of a powerful reason. The notary in question – Atty. Nelson Rosario-Rodriguez, legal representative of the PAC –, clarified with absolute honesty and sincerity, that the daily discharge of his other professional endeavors as a lawyer, as a means of living to comply financially with his parental and child support duties, prevented him from spending more time than the one he had used in those activities. He also stated the difficulties he had in recruiting, with no success, other lawyers-notaries. The veracity of those statements has not been questioned.**

Second, the majority emphasizes that the PAC had not obtained the electoral lists after a case in which finally this court authorized it. (*Per Curiam*, page 7). Once agains, its attorney explained that it was not done ("been done") because of the cost that entailed $1,800.00, and in awaiting for the present case to be solved. **To ascribe a lack of diligence, in all justice, how can the majority of**

the Court take the economic capacity or lack thereof to acquire them, to be one of the determining factors? The PAC requested the lists to the State Commission since May 26, 1998. In June that organism denied them to them. Subsequently, both the Court of First Instance and the Circuit of Appeals also denied them to them. It was not until September 27, 1999 – mandate sent on October 14 –, that we recognized that right. On that date, this other appeal presented on May 21 of the same year was pending. Two (2) weeks later the mandate authorizing the delivery of the lists, the majority denied the PAC, in aid of jurisdiction, the alternate remedy that they requested from voters *ad hoc* notaries. **In these circumstances and considering the cost that the lists represented; how could the decision of the PAC of postponing its acquisition, until its argument about the unconstitutionality of Art. 3.001 of the Electoral Act were solved be labeled of unreasonable or deem it as indicative of indolence?**

Third, the majority mentions the absence of "electoral strength", since the PAC did not produce a list of voters ready to endorse it. (*Per Curiam*, pages 7-8). **Since when does this requirement exist? Never!**

Finally, the majority points out that the negative of the PAC to consider and welcome other public officials, as an alternate mechanism to certify the endorsements, shows lack of interest in getting registered. (*Per Curiam*, page 10). **Regarding this matter, we have the impression that the PAC is being penalized for exercising the right to request a decree of unconstitutionality and, because of the time factor, insist in the remedy of *ad hoc* notaries.**

The judicial claim of the PAC cannot be diminished with the erroneous conclusion of the majority that "it has not demonstrated a reasonable diligence in the defense of the **concrete interest that it pretends to litigate.**" Neither with the assertion that its "electoral base" is abstract and hypothetical, because it only produced ten sworn statements and, "it has not shown us that it counts with the support of identifiable persons or groups, which every political group that aspires to become a political party and to present candidate in the whole country needs." (*Per Curiam*, page 13).

The majority introduces a new **extralegal** requirement to formulate judicial claims – that the groups credit "electoral strength" before the courts –, **paradoxically, the demands that have a bearing on the way in which to legally demonstrate that sufficiency of electoral force is precisely what is being questioned.** We say **extralegal**, because the *Electoral Act* and the *Regulation for the Registration of Parties by Petition* only demand from the groups in the process of registration a **sworn application**, stating that the applicants are duly registered voters – the name and emblem they plan to use, joined by their government platform –, and the names and addresses of those constituting its directing organ.

The "electoral strength" under the optic of the majority is a foreign and erroneously untimely criterion. The only support visualized by the Electoral Act is concretely and timely demonstrated with the numerical sample of the active voters, to wit, an amount "no less than five (5) percent of the total votes cast for all candidates for the office of Governor in the preceding general election". **That's the "electoral strength or force" that the**

Electoral Act contemplates; we can not consider any other. And certainly, to establish and prove it, every group of voters has until May 31, but with the current difficulty – from which we cannot detach ourselves –, of the requirement of individual exclusive notarial affidavit. **We cannot force the voters to cross a bridge before reaching the river.**

Intimately related, the majority concludes, viewing the performance of the Partido Renovacion Puertorriqueño (PRP) – which attained its registration for the 1984 general elections –, that the challenged provisions "are not so onerous as to make impossible that a political group demonstrating a degree of reasonable diligence gains access to the ballot." (*Per Curiam*, page 17; emphasis supplied).

If this fact reveals something, it is how burdensome the notarization requirement is. According to the *Statement Report of Parties by Petition* made available by the State Commission itself, the groups that requested to be certified begin the process of registration – under the requirement of *jurat* before a notary –, as island-wide parties by petition (eight in total), **only the PRP achieved access to the ballot.**

To qualify, without further explanation, the diligence of the PRP as a reasonable one and conducive to its registration achievement, is to abstract oneself from the political contingencies of that historic moment. See, F. Bayron Toro, *Elecciones y Partidos Politicos de Puerto Rico*, Ed. Isla, pages 307-309 (1989).

Besides the peculiar circumstances of the PRP, the truth is that the last "new political party" that could, in

fact, participate in general elections was the Partido Socialista Puertorriqueño (PSP), in 1980. **Curiously, although Art. 3.001 of the electoral Act was amended on November 15, 1978 – almost two exact years before the elections of November 1980 –, to include the requirement of notarial exclusivity, the same was not demanded to the groups that sought to register for those elections, due to its "proximity". That fact is very revealing and speaks for itself.**

After the requirement of notarial exclusivity was implemented, the three main political parties – Partido Nuevo Progresista, Partido Popular Democratico and Partido Independentista Puertorriqueño – has successfully being able to leave out other political-social movements.

> "Although the **efforts previously performed** by parties by petition and independent candidates to comply with the statutory requirements of access to the ballot are evidence of the onerous effect of the statute, these considerations should not, conclusively, determine the validity of the registration requirements. A diligent – or rich – party or candidate may gather an extraordinary number of signatures, but the collection, in itself, does not mean that the statute is constitutional. **Overemphasizing prior performances tends to punish the candidate who questions the constitutionality of the requirements and, at the same time tries to comply with the law** . . . Therefore, the fact that other candidates, in the past, have been able to satisfy the requirements of access to the ballot, should only have nominal relevance, when considering the constitutionality of a statute." Note, Nominating Petition Requirements for Third-Party and

Independent Candidate Ballot Access, 11 Suffolk U. L. Rev., 974, 990 (1977).

IV

What are the historic-legislative backgrounds of the requirement of notarial exclusivity? Is it really a tradition?

A journey begun since the first Electoral Act, No. 79 of June 25, 1919 – through the route of Act No. 2 of June 18, 1924, Act No. 3 of October 5, 1965, the Electoral Code of 1974 and, ending in the Electoral Act of 1977 –, **overwhelmingly defeats the legislative conclusion and the existence of a traditional notarial exclusivity.**

Thus, in its origin, under Sec. 37 Law No. 79 of 1919, the endorsing voters swore a statement **"before an official authorized by law to take oaths."** That included all judges and, obviously, the notary publics that would be ready to do it. The process was so quick and simple that it was not necessary to present a separate sworn statement for each signer: the certification of the official covered everyone.[7]

The possible intervention of a notary lasted scarcely five (5) years. In 1924 its involvement was eliminated and it was established that the endorsement be **"before a Puerto Rico judicial official authorized to take oaths,"** that is, the members of the judicature. It was

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[7] This text was kept unaltered in Acts Nos. 15 and 74 of May 12, 1920 and July 30, 1923, respectively.

mandated a separate certification for each oath and signature.[8] Later, in 1961 the phrasing changed and established that the petition be signed before the Chairman of the Local Elections Board, superior and district judges and judges of the peace. **The lawyers-notaries continued being excluded.** Four decades after 1924, in the year 1965, it was added and expressly mentioned, **for the first time, the notary that accepts being named by the State Elections Board.**

The lesson is clear. For more than sixty (60) years an ample legislative scheme prevailed, free from obstacles and clearly accessible to the voters of the country who could go before Judges and Chairmen of Local Boards. Because of the public nature of public officials, there is no doubt that they had to comply with that ministerial duty. The notary public was another alternative: there was no need to appear before them.

This open legislative design was closed in 1978, with the establishment of the notarial monopoly for the registration of new parties. The legislative history reveals that it was imposed to supposedly correct an "involuntary omission" occurred during the approval of the Electoral Act of 1977, consisting in that it did not provide for the swearing in of registration petitions for political parties. It was justified based on the erroneous legislative vision of "complying with a tradition in our registration process of parties by petition." (Report House of Representatives, October 24, 1978).

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[8] These provisions remained the same as Acts Nos. 74, 114, 10, 87, and 1 of July 6, 1932, June 29, 1936, August 18, 1952, June 20, 1955 and September 2, 1955, respectively.

In contrast with that legislative perception, we have seen that **there never was a "tradition of notarial exclusivity"** until it was imposed in 1978. **The historic reality always was of a more ample access through judicial, electoral officials and, for some time, "volunteer" notary public.**

We say "**volunteer** notaries" because that was the practice that prevailed during the very short period in which the Electoral Act authorized it. It allowed, as a complement to the judges and the chairmen of the local boards, that in the first stages of formation of the groups they recruit sympathetic notaries ideologically identified with their ideas and programs, **who volunteered their services and obtained commissions from the State Board.**

Upon the elimination of the opportunity of the oath before judges and electoral officials, since 1978 the Legislative Assembly created **the unsurmountable barrier of the notarial electoral monopoly**. It imposes on the endorsing voters the obligation of notarizing their signatures, nonetheless, it does not obligate any notary – neither does the Notarial Act – to do it. They rest on the sole willfulness and discretion if the lawyers-notaries to claim their rights. **The Government does not provide officials, mechanisms or alternate remedies to authenticate them in case that they refuse**. The requirement of sole endorsement before notary exists but, paradoxically, it allows its implementation to rest in the premise that they will perform this function "voluntarily."

The majority, via footnote, simplifies and sees no difficulty whatsoever to those notarial measures for

which it affirms, the groups "can rely on different methods: they can send or bring the voters to the offices of the notaries; they can have a notary join them in their campaigns of collection of endorsements; they can locate themselves in strategic places and of public access with personnel carrying the political message and requests the endorsements and simultaneously have notaries that swear in the endorsements etc." (*Per Curiam* Opinion, page 16, note 7).

If these "measures" show something, it is the state of notarial dependence. In its live application, the requirement of swearing the endorsements exclusively before notaries means that a fledgling movement will have to first convince to a considerable sector of the citizenry to give their signatures to endorse the registration of the new political party. Then, appeal to the social function of the notarial profession, persuade and make this **sub-group** of citizens – professional class with a license to practice the profession –, to decide, upon their own discretion, to offer the service of authenticating the signatures of the endorsees following some of the "methods" that the court expounded and later file the four (4) relevant reports, everything for the nominal fee of one dollar. **If it's true that they have to convince some, the others will have to be doubly convinced. Under the majority's view, is it electoral or notarial support?**

V

We talk of **convincing**, not obligating the notaries, because Art. 3 of the current Notarial Act – No. 75 of July 2, 1987 –, gives them total autonomy in the discharge of

their functions. It reads: "The notary will be authorized to exercise his function in the whole Commonwealth of Puerto Rico. In such function, **he will enjoy plenary autonomy and independence**, will perform it with impartiality and will be under the administrative direction of the Supreme Court." (Emphasis ours).

The preceding Notarial Act – No. 99 if June 27, 1956 – , did not mention such autonomy. We have not had the opportunity to express about its meaning and reach. We could venture to suggest that it refers back to the classical principle of contractual willfulness.

It does not escape to our consideration that **the notaries are not public officials**, but professionals of the Law – *People* v. *Central Cambalache*, 62 D.P.R.553 (1943) –, who perform a public function, that is, they are authorized to give legal authority and authenticity to the legal transactions and other acts and facts performed before him. Notarial Act, Art. 2.

Certainly when a notary discretionarily and voluntarily decides to obtain an appointment from the State Commission to authenticate these endorsements – paid at a rate of one dollar each –, it could be argued that such appointment confers them the limited status of public official of the State Commission and is then compelled to perform it. Nonetheless, the problem is that neither the Electoral Act nor the Notarial Act do not require such demand. **That maybe the mere legislative mention that the *jurat* be before lawyers-notaries, imply a *de iure* metamorphosis and an investiture of public officials binding them to serve a quasi-electoral function? As a**

novel legislative invention, does concept of public office notaries emerge the?

It is convenient to underline and distinguish once more the nature and dynamic practice of the Latin notary *vis a vis* the Anglo-Saxon notary public. The latter do not have the same clerical, authorizing and ethic responsibilities as the Puerto Rican notaries. Their performance as notaries is frequently incidental or secondary to a different profession or employment. The collection of signatures – actively, by going directly to the possible endorsees, or passively, by making them available almost exclusively so that the signers appear before them to authenticate their signatures –, is not particularly difficult for a citizen who is a notary public, only incidentally, to engage in the search for endorsements. But, as the PAC established before the Court of First Instance in its original **undisputed** allegations – subsequently, through affidavits from voters and lawyers-notaries that it joined in its request for reconsideration and in the oral hearing – the availability is minimal. **It was proven that it is very difficult and financially burdensome to leave their professional practice, overlapped with serious ethical responsibilities, to become a collector of signatures for one dollar.**

On the other hand, if they were compelled, less than six weeks of the deadline (May 31) for the PAC to present 97,784 endorsements, which are the criteria and who will choose those notaries? Will only those with a private practice be subjected? Will those who work in the government, agencies and other public entities be included? What schedule will be demanded from them? Can they be compelled to go out of their offices? Will they be imposed

a minimum quota of oaths? What about the notaries that because of their other professional duties and clients, as lawyers, have conflicts and refuse to notarize a signature to endorse the PAC or any other of the partisan organizations that are in the same process? If the refusal is because of not believing in the new movement or being ideologically affiliated to the existing principal parties, are they "conscientious objectors"? *Ramirez de Ferrer* v. *Mari Bras*, decided on November 18, 1997, 144 D.P.R. ___ (1997), Concurring Opinion, Associate Justice Negrón García. What remedy do the voters rejected by the notary have? To file a complaint before this Court for ethics violation?

If authenticating the signature is a ministerial duty, will the voters have to request a *mandamus* to compel them? What criteria, then, will we use to exempt specific notaries from this new obligation? Is the Government not erecting hindrances and permanent impermissible obstacles?

The list of these questions is not exhaustive; they make evident that the possible alternative of compelling legislatively or judicially the lawyers-notaries of the country to perform this electoral function as a remedy to the unconstitutionality of the statute, certainly raises more legal questions and creates more practical difficulties than it solves.

VI

We have seen that, on its face and operationally, under our Constitution and **strict judicial scrutiny**[9], we

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[9] The standard of review applied by the Federal Supreme Court to cases of access to candidates and political parties is extremely casuistic and lacks a unique criterion or systematic approach to the problem.

> "So, the Court seems to be committed to a judicial review independent from the restrictions to candidates through a test of the balance (of interests) somewhat undefined which weighs the restriction of the freedom of the voter under the First and Fourteenth Amendments against the interest of the State in helping the population to have sufficient options for the selection of public officials. The Courts shall also examine the conflict between state law and the regulation of political parties as to the eligibility of persons who participate in primary elections as voters or candidates in order to determine whether the State is unconstitutionally interfering with the freedom of association of [such] persons who have gathered to create a political party." Ronald D. Rotunda and John E. Nowak, *Treatise on Constitutional Law* (3rd edition, 1999), pgs. 710-711. (Our translation)

The main criterion as to the level of scrutiny to be applied to a limiting statute of the registration of a candidate or party is the severity of the restriction imposed on the capacity of the voter to exercise an electoral choice, or to the citizen's rights to associate and speak freely about political matters. In these cases, the strict scrutiny shall be applied.

If, on the other hand, the right to freedom of speech and association of the citizens and the free political choice of the voter are not significantly affected, a balance of interests will only be done. *Id.* pgs. 711-712. Under the Federal Constitution, the strict scrutiny is not automatically activated in cases of access to the ballot, because there is no explicit right to be stated

are facing a restrictive, onerous, discriminatory and impermissible scheme.

Our jurisprudential doctrine is abundantly generous in the interpretation of the electoral rights; we should not abandon it. As we said previously in the present case, "the ample vision of our democracy means that the exercise of the suffrage not only implies individual access to the ballots but that – with subjection to certain necessary reasonable limitations –, included in the ballots are options reflecting the ideas and conceptions of the voters of a pluralist society. Also, the freedom of association entails the right to form groups and propose candidates of their preference to participate in the electoral process. *P.S.P.* v. *C.E.E.*, 110 D.P.R. 400 (1980); *Garcia Passalacqua* v. *Tribunal Electoral*, 105 D.P.R. 49 (1976)." *Partido Acción Civil* v. *E.L.A.*, res. On October 27, 1999, 99 TSPR 163, Dissenting vote, Associate Justice Negrón Garcia.

By its nature, the registration of a political party by petition in Puerto Rico, is **undistinguishable** from the practice of proposing a particular legislation by endorsements in the United States in jurisdictions where that is allowed. **Substantially, the rights of freedom of speech, association and suffrage involved are the same and pursue an identical purpose: to force public discussion, whether of a single matter, in the case of a legislative proposal, whether of a program, a political philosophy or a set of principles in the case of the formation of a**

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as a candidate therein. *Id.* pg. 706. Therefore, the access to the ballot is based indirectly on other rights, such as freedom of speech and association and the right to vote.

party. In its essence, procedurally, both use the same method: the circulation of endorsement forms in which the voters as particular citizens, imprint their signatures to express their agreement with the inclusion of the party or the proposed legislation on the ballot. **The political parties, as the popular legislative proposals, are registered through endorsements forms.** It does not fit to differentiate – through casuistic subtleties – two practices that, in its legal essence, operation and mechanism, are undistinguishable.

The majority's distinction which rejects the persuasive value of the cases of *Meyer* v. *Grant*, 486 U.S. 414 (1987) and *Buckley* v. *A.C.L.F.*, 525 U.S. 182 (1999), invoked by the PAC) is questionable then, not to say erroneous, (*Per Curiam*, pages 13-17). The majority ignores that both validated a **completely different** affidavit requirement to the individual one and only before notary ordered by Art. 3.001(3) of our Electoral Act. **There, the legislation demanded that the gatherer of signatures for the petition or circulated proposal, swore before a notary that all the signatures in his list had been obtained legally. This requirement, more than reasonable, is a far cry from one in which each signature in a petition be notarized individually, as an onerous fashion, without any other alternative, demands our legislation.**

Nonetheless, the majority concludes that, differently from those cases, the norm of notarial exclusivity does not restrict the freedom of expression of the voters members of the PAC, because it does not limit whatsoever that "the persons that can communicate the political message outlined by such party to convince registered citizens to

endorse the registration petitions, or who can act as gatherers of endorsements." (*Per Curiam*, pages 14-15). In its judgment, they have complete freedom of speech, to spread their messages by any means, to communicate directly, requesting support and to ask the voters to bring the endorsements petitions. **It accepts, nonetheless, that the petitions and signatures of the voters have to be individually validated only before notaries.** (Id., page 16). The majority's prism disregards a primary reality: that the result, value and efficacy of the electoral registrations, product of the exercise of the right to free speech and the previous message to the voters, **depending upon and subordinated to the lawyers-notaries of Puerto Rico validly configure them in individual affidavits.**

With the requirement of notarial exclusivity in the authentication of the signatures in the electoral endorsements, the Government has established a design that delegates and leaves to the sole will of the lawyers-notaries the registration itself of any new political party. It is in their hands, because they are the only ones authorized to perform such function; nobody else can, under the law, do it. To enter the arena and achieve an electoral franchise, there is only one door which key is kept by a professional group that is not obligated to use it, notwithstanding the genuine intentions of a fledgling party to contribute to our pluralist society; even contrary to the will and right of a citizen wishing to imprint its signature on an endorsement sheet. Not only the right of the movement to enter in the political-electoral field is abridged, but also that of the citizen to record his endorsement and to, in due time, give practical political and legal effects to his vote.

In our democracy, the Legislative Assembly has, with certain limitations, ample power to guide everything concerning the elections. One of them is that it cannot directly or *indirectly*, elevate the system and continuity of the three large ideological parties through the establishment of unreasonable restrictions to the birth of new ones to the category of virtue. The demand of endorsements only before lawyers-notaries is another example of unconstitutional PARTYCRACY.

VII

The judicial road of the PAC to overcome and terminate the onerous legislative scheme of the notarial electoral monopoly has been slow, difficult and uphill. It began with its challenge on October 6, 1998 before the Court of First Instance by filing an injunction and declarative decree. It was not successful. Later it appealed and the Circuit Court of Appeals affirmed. On May 21, 1999, it knocked on the doors of this forum, and as we indicated before, on October 27, 1999, by a divided vote – with the dissent of the Associate Justice Mrs. Naveira de Rodón, Associate Justice Mr. Fuster Berlingeri and the undersigned –, they were denied of an alternate and expedited remedy in aid of our jurisdiction . . . At that moment the majority did not accept our quick remedial proposal, economic and less onerous, – equally guaranteeing against fraud –, of authorizing the endorsements to be "also before the officials of the Permanent registration Boards in each municipality." On February 25, 2000, by Opinion equally divided, the Court affirmed the dismissal of the *mandamus*. On that occasion, in view of the

majority's reiterated rejection to our position of authorizing the endorsements before the officials of the Permanent Registration Boards, **by legal imperative, we called it unconstitutional.**

Today, nobody can seriously deny that to continue demanding from the PAC only endorsements before notaries prevents it to register on or before next May 31.

In these circumstances, without further delay, as the only immediate judicial remedy we would authorize the PAC, and order the State Elections Commission to activate, the method of *ad hoc* notaries established by Art. 4.001 of the Electoral Act.

***"Tempus fugit"* (Time flies).**

[Signature]
ANTONIO S. NEGRÓN GARCÍA
Associate Justice

CERTIFIED TRANSLATION

Commonwealth of Puerto Rico
IN THE CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT I – SAN JUAN
PANEL III

PARTIDO ACCION CIVIL Plaintiff v. COMMONWEALTH OF PUERTO RICO; STATE ELECTIONS COMMISSION; JUAN R. MELECIO, PRESIDENT OF THE STATE ELECTIONS COMMISSION; NEW PROGRESSIVE PARTY ELECTORAL COMMISSIONER; POPULAR DEMOCRATIC PARTY ELECTORAL COMMISSIONER; AND PUERTO RICAN INDEPENDENCE PARTY ELECTORAL COMMISSIONER Defendants	CIVIL NO. K PE98-0866 (907) RE: DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW the Partido Acción Civil, and very respectfully alleges and prays:

I. INTRODUCTION

1. Plaintiff, Partido Acción Civil, is a group of citizens who aspire to register as a party by petition because they do not agree with the manner in which the current political parties are handling our country's public affairs. The Partido Acción Civil believes that with its ideas, government program and genuine efforts it can contribute to the resolution of the serious problems faced by the People of Puerto Rico.

Registering as a party by petition is of utmost importance to the Partido Acción Civil. Becoming a party by petition means having an Electoral Commissioner in the State Elections Commission who will intervene in the electoral processes, with full voting authority. It means having employees in all of the Permanent Registration Boards, having access to the Electoral Fund to develop its government program, campaigning, and having officials in all of the electoral colleges to ensure that all votes in its favor are counted.

The other parties have all of those benefits. A group of citizens without those resources is at a serious disadvantage. That is why it is so important to be a party by petition. To become a party by petition is the consecration of freedom of association, of speech and of the right to vote for citizen groups with similar political interests, so that they may face the traditional political parties on equal footing.

2. The right to vote, to speech, to association, to asking the government for reparation of grievances, and to be candidates of the Partido Acción Civil and of its constituents, is being violated on a daily basis by the two

statutory provisions challenged herein. The first of those statutory provisions is the requirement that the oaths for each petition for the registration of the Partido Acción Civil be notarized before notaries who comply with the Notarial Act currently in effect in Puerto Rico.

This Honorable Court may take judicial notice that according to the Notarial Act, only attorneys who have passed the bar and are admitted to the practice of the profession in this jurisdiction may take oaths. This means that the oaths for the petitions for registration may only be notarized by attorneys admitted to the practice of law in Puerto Rico.

This requirement is extremely onerous, unreasonable and discriminatory, it violates due process of the law, and it causes irreparable damages to the Partido Acción Civil and to its members, insofar as it is extremely difficult to recruit attorneys who will take on the task of notarizing the oaths of the petitions for registration.

3. The other requirement whose unconstitutionality is requested is the requirement that the endorsements must be filed with the Commission within just seven (7) days after being sworn. This requirement is extremely onerous and unreasonable due to the fact that it is too short a term. For each endorsement it is necessary to prepare reports, make copies, confront the endorsements with the voter lists, and take them to the Commission. This seven (7) day term is extremely short.

This requirement causes damages to the Partido Acción Civil with respect to is rights to expression, to vote, to association, to requesting from the government reparation for grievances, and to being a candidate. This

requirement is totally unreasonable, discriminatory and unconstitutional, and seriously limits the possibilities that this Party will register as a party by petition.

4. In the State Elections Commission, the Electoral Commissioners represent the interests of the New Progressive Party, the Popular Democratic Party, and the Puerto Rican Independence Party. By virtue of the Electoral Act, these persons are the ones in charge of making electoral decisions.

5. Mr. Juan R. Melecio is the President and administrator of the State Elections Commission. Among other duties, he is responsible for deciding matters on which the Electoral Commissioners cannot agree.

6. The State Elections Commission is the administrative entity which administers the Electoral Act.

7. The Commonwealth of Puerto Rico is an indispensable party to this action insofar as it is the entity in charge of defending the constitutionality of the laws of the Commonwealth of Puerto Rico.

II. DECLARATORY JUDGMENT

8. It is requested that the Section 3.001 of the Electoral Act be declared unconstitutional insofar as it requires that the petitions for endorsement of the Partido Acción Civil be sworn before a notary-attorney, and Section 3.002 of the Electoral Act insofar as it provides a seven (7) day term to file the petitions for registration after being sworn.

A. Requirement that it be an Attorney who notarizes the oaths of the petitions for registration.

9. Article 3.001, paragraph 3, of the Electoral Act provides as follows:

> "(3) 'Párty by Petition' shall be any group of citizens who, desiring to appear on the electoral ballot of a general election, shall register as a political party, on or before June 1 of the election year, by filing with the Commission sworn petitions to such effect, before notary publics duly admitted to the practice of notary, ***pursuant to the provisions of the Notary Act in effect***, who shall collect from the Electoral Commission a fee of one (10 dollars for each valid, notarized petition signed by a number of electors of no less than five (5) percent of the total votes cast for all candidates for the office of Governor in the preceding general election. A government program or political platform, as well as the names and address of the group of electors that constitute its central directing body, must also be presented." *[Official translation.]*

10. To demand that it be an attorney who notarizes the oaths of the petitions for registration of the Partido Acción Civil is an unreasonable and excessively onerous requirement, totally lacking any justification, which makes it impossible and unnecessarily hinders the right of the candidates of the Partido Acción Civil of access to the electoral ballot. Those unreasonable and onerous conditions also violate the constitutional rights to expression, right to vote, right to association, and to due process of the law, as have been consecrated by the United States Supreme Court in the doctrine of access to ballot.

11. The requirement that it be attorneys who notarize the oaths of the petitions for registration is unreasonable insofar as it subordinates the creation of any party by petition to the legal professional.

12. The requirement that it be attorneys who notarize the oaths of the petitions for registration is unreasonable insofar as it limits the number of endorsements that can be collected daily due to the limited number of all of the attorneys in this jurisdiction.

13. The requirement that it be an attorney who notarizes the petitions for registration is unnecessarily onerous insofar as it is prohibitive for an attorney to leave his/her office – with the cost of opportunity that this implies – to go to the street, house by house, or to public places to gather endorsements.

14. It is extremely onerous for an attorney who notarizes the petition for registration to have to then abandon his/her office and go house to house, to public places to gather the endorsements to prepare four reports. These are: a first report to the State Elections Commission, another quarterly report for the State Elections Commission; enter each endorsement in his/her affidavit log by hand, send the notarial index which must be sent on a monthly basis to the Office of the Inspector of Protocols.

15. It is extremely onerous for any attorney to notarize the petitions for registration insofar as the cost of opportunity is much greater than the dollar which the Act provides be paid to the attorney for each validated endorsement. This is an economically losing proposition

for any attorney and, obviously, decisively dissuades the recruitment of attorneys to swear oaths.

16. It is extremely onerous and unreasonable, and an economic fiasco, for any attorney to have to swear the petitions for registration insofar as between the process of preparing the reports and corroborating the information on the endorsements with the information contained in the voter lists, certainly the attorney loses money.

17. It is onerous for the Partido Acción Civil that it be attorneys who swear the petitions for registration insofar as the Party would first have to campaign to recruit attorneys and then campaign for the citizens to endorse the party. This is clearly unreasonable and onerous.

18. In addition to the foregoing, the requirement that it be attorneys who notarize the oaths in the petitions for endorsement is unconstitutional as it violates equal protection under the laws. The rights to association, to vote, to expression, to asking the government for reparation of grievances, and to being candidates of the group of citizens which constitutes the Partido Acción Civil are being undermined.

19. Article 4.011 of the Electoral Act provides:

"Officials to swear petitions for primaries.

Petitions for primaries may be sworn to before the officials authorized by law to take oaths, as well as before any elector authorized by the Commission to perform such duty, at the request of each candidate for primaries.

Persons authorized to take oaths related to petitions for primaries shall be deemed officials

of the Commission for all legal effects, and they shall keep a record of all persons sworn, and the date on which the oath has been taken. This record shall be signed and sent to the Commission at the end of the period for filing petitions for primaries.

When administering the oath, the officials or electors authorized hereby shall sign in the place designated for such purpose in the petition for primaries, and state the serial number in the chronological order that corresponds to the oath being certified in each case. The numbering used by each official shall be of only one series, from number one to that of the last oath administered." *[Official translation.]*

As it reads in the above-cited provisions, the law allows the candidates from the traditional parties to be able to achieve their candidacy to primaries through petitions for registration, whose oath is notarized before electors authorized by the Commission. To distinguish that group of possible candidates (the ones from the traditional parties) from the possible candidates of the Partido Acción Civil is classification by political beliefs. The candidates of the traditional parties have a great advantage over the candidates of the Partido Acción Civil.

20. Classification by political beliefs is a suspect classification which directly affects the fundamental rights to association, to vote, to expression, to asking the government for reparation of grievances. Discrimination by reason of political beliefs is specifically prohibited in Article II, Section 1 of the Constitution of the Commonwealth of Puerto Rico.

21. Since the classification is for political beliefs, it is clearly suspect. Due to the foregoing, and because such classification interferes with the fundamental rights to association, to vote, to expression, to asking the government for reparation of grievances, and to the right to be a candidate, strict scrutiny is applicable.

22. Since strict scrutiny is applicable, the requirement that the oath of the petitions for registration be sworn by an attorney is presumed illegal. The State must show which is the compelling objective pursued with such a requirement, and it must prove that the challenged law is the only way to advance such compelling goal.

23. Definitely there are less onerous ways to advance any objective the State may have in requiring that the oath of the petitions for registration be notarized.

24. The fact that the petitions for candidates to the primaries may be notarized through electors authorized by the Commission to notarize documents proves that the requirement of an attorney to notarize the oaths of the petitions for registration is not indispensable. It is also proven that such requirement is not the only way to advance any objective the State may have.

B. <u>Requirement of filing the petitions for registration seven (7) days after being sworn.</u>

25. It is requested that Section 3.002 of the Electoral Act be declared unconstitutional with respect to the requirement that endorsements be filed with the Commission in the briefest period of seven days after the

endorsement is sworn, otherwise they would be rejected. Article 3.002 of the Electoral Act provides:

> **"Invalid petitions for registration of party**
>
> The Commission will reject every petition for the registration of a political party signed by a person:
>
> 1. Who is not a duly registered elector on the date he signs the petition;
>
> 2. Who during the immediately preceding two- (2) year period has signed a petition to register another party; or
>
> 3. Who has not complied with the formalities established in this subtitle or the regulations adopted hereunder, including the veracity and authenticity of the data stated in the registration petition.
>
> *The registration petitions of a political party must be filed before the Commission no later than seven (7) days after having taken the oath in question.* The Commission, through regulations, shall establish the form and the procedures to be followed for the filing and accepting of said registration petitions." *[Official translation.]*

26. The requirement of having to file the petitions for registration just seven days after having taken the oath is a violation of the rights of the Partido Acción Civil, and of its constituents, of due process of the law in its substantive capacity.

As we mentioned previously, the Partido Acción Civil and the members of the Party are entitled to have access to the electoral ballot, to freedom of expression, to vote, to association, and to asking the government for

reparation of grievances. These rights are fundamental rights.

27. When any regulation which limits the exercise of fundamental rights is questioned, strict scrutiny is applicable. Since strict scrutiny is applicable, it is presumed that the law is unconstitutional and the State must establish the validity of the challenged law. The State must establish that it has a compelling objective which it pursues with the law being challenged and that the challenged law is the only way to achieve 'such compelling objective.

In this case, certainly we do not see what is the compelling objective pursued by the State in requiring that the endorsements, once sworn, be filed with the Commission within the term of scarcely seven (7) days. Definitely, to demand that the endorsements be filed, perfected with their reports, copies, etc., within such a brief term as seven (7) days is not the least onerous way to advance any objective which the State may allege.

1. Seven (7) days is certainly too brief a term. It is necessary that 98,685 endorsements be collected before May 21, 2000.

There are 609 days left between October 1, 1998 and May 31, 2000. It is necessary to collect 98,685 endorsements. If we divide 98,685 endorsements into 609 days, which is the term the Partido Acción Civil has to collect the endorsements, we see that it is necessary that the Party collect 162 endorsements per day. One hundred sixty-two endorsements by seven (7) days equals 1,134 endorsements per week. It definitely takes more than

seven (7) days to prepare the reports, make the copies, perfect 1,134 endorsements with the electoral lists.

It is extremely onerous for the Partido Acción Civil in such a brief time as seven (7) days to file the endorsement once sworn, especially since the Commission has 45 days to reject or accept the endorsements. We do not see any justification whatsoever to the seven (7) day requirement to file the endorsement once sworn.

This is an extremely onerous, unreasonable and unnecessary requirement which must be declared unconstitutional by this Honorable Court.

WHEREFORE, we request of this Honorable Court the following remedies through declaratory judgment:

> (1) That it declare unconstitutional Paragraph 3 of Article 3.001 of the Electoral Act insofar as it requires that it be attorneys admitted to the practice of law in this jurisdiction, pursuant to the provisions of the current notarial act, who notarize the oaths of the petitions for registration;
>
> (2) That it declare unconstitutional Section 3.002 of the Electoral Act insofar as it demands that the petitions for registration of a political party be filed before the Commission not later than seven (7) days after having taken the oath in question;
>
> (3) That it declare that both clauses of both Articles cause irreparable damages to the Partido Acción Civil and that it is imminent that it will continue causing damages if this Honorable Court does not declare them unconstitutional.

(4) That it declare that the constitutional rights of the Partido Acción Civil and of its members be safeguarded likening the registration process as a party by petition to the registration process for primaries as set forth in Article 4.011 of the Electoral Act.

Wherefore, the Partido Acción Civil very respectfully request of this Honorable Court that it issue the following permanent injunction:

III. PERMANENT INJUNCTION

1. The Partido Acción Civil adopts and alleges everything stated in the declaratory judgment as if it were alleged herein.

2. The Partido Acción Civil files this action requesting declaratory judgment and injunction so that this Honorable Court may declare unconstitutional the clauses of Articles 3.001 and 3.002 which require that it be an attorney who notarizes the oaths of the petitions for registration and that they be filed with the Commission seven (7) days after the oath is notarized, and so as to avoid the application of such statutory provisions because otherwise defendants will continue acting pursuant to the provisions of said Articles of the Electoral Act.

3. Defendants will continue applying the requirements challenged herein throughout the registration process of the Partido Acción Civil, making it impossible for the Party to register as a party by petition. The foregoing constitutes irreparable damages to the Partido Acción Civil, to its members, and to Puerto Rican democracy.

4. Plaintiffs have no other legal remedy. No other action or effort, whether judicial or administrative, may grant adequate, speedy, dynamic and sufficient remedy to protect the fundamental rights of plaintiffs which are being violated with impunity each day.

5. It is evident from the complaint for declaratory judgment and permanent injunction that the Partido Acción Civil is entitled to the remedy requested.

6. It is evident from the complaint for declaratory judgment and permanent injunction that the application of the clauses of Articles 3.001 and 3.002 challenged herein will continue causing serious damages to the Partido Acción Civil.

7. The circumstances alleged hereinabove require immediate judicial action, and should the same continue in effect, the Partido Acción Civil will suffer irreparable damages. The granting of the injunction requested will halt the continuation of the requirement of notarization of the oaths of the endorsements by an attorney, thus allowing the members of the Partido Acción Civil themselves, who are not attorneys, to collect and swear the petitions for registration. Furthermore, the elimination of the requirement of filing at the Commission after seven days of having collected the endorsement will allow for the perfecting of each petition for registration, the drafting of reports, etc., of a larger amount of petitions without their being rejected for having been filed after the seven days.

8. The adjudication of this declaratory judgment declaring unconstitutional the statutory provisions challenged is compelling since with each day that goes by the Party is unable to collect endorsements. To date, in this

initial stage, the Party has more than 20 electors available to collect and swear the petitions for registration.

To date, however, notwithstanding the pleas made in the radio programs in which the Party has participated and in personal solicitations to attorneys, the party only has two attorneys to collect and swear the petitions for registration. These attorneys can only work a few hours on some weekends or holidays due to their prior commitments.

9. Definitely this circumstance, created by the requirement that it be an attorney who notarizes the oaths, causes irreparable harm to the Partido Acción Civil and creates an imminent risk that the Party may not be able to register or that its registration will be so delayed that there would be very little time left to organize an electoral structure, carry out propaganda, etc. Monetary compensation will not provide an adequate remedy to compensate the damage being caused by the challenged statutory provisions.

10. The granting of this injunction is not impeded by any of the circumstances stated in Article 678 of the Code of Civil Procedure, 32 L.P.R.A. 3524, or the applicable case law.

11. This Honorable Court has jurisdiction to grant the remedies requested by virtue of Rule 57 and 59 of Civil Procedure, of the Injunction Act, 32 L.P.R.A. 3521, and of Section 1983 of Title 42 of the United States Code.

WHEREFORE, we respectfully request of this Honorable Court that it Grant this request for permanent injunction and order defendants to:

(1) Cease requiring that the oath of the petitions for registration be notarized before an attorney;

(2) Cease requiring that the petitions for registration be filed with the Commission within seven (7) days after the oath is taken.

(3) Equate the endorsement swearing and endorsement filing processes with the process required for filing candidacies for primaries, as provided in Article 4.011 of the Electoral Act;

(4) Any other remedy which is deemed suitable to protect the constitutional rights of the Partido Acción Civil and of the People of Puerto Rico to freedom of association, freedom of speech, to vote, to ask the Government for reparation of grievances, and to the right to be candidates.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on October 6, 1998.

(Signed)
NELSON ROSARIO-RODRIGUEZ
BAR ASSOC. NO. 11294
P.O. BOX 23069
SAN JUAN, PR 00931-3069
TELEPHONE/FACSIMILE: 764-0429

Certification

I, Olga M. Alicea, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the U.S. Courts, do hereby certify that I have personally translated the foregoing document from Spanish to English and that the translation is true and accurate to the best of my knowledge and abilities.

/s/ Olga M. Alicea
Olga M. Alicea, USCCI

ESTADO LIBRE ASOCIADO DE PUERTO RICO
COMISIÓN ESTATAL DE ELECCIONES
SAN JUAN, PUERTO RICO

PETICIÓN DE INSCRIPCIÓN DE PARTIDO POR PETICIÓN
En el Asunto de Inscripción del **PARTIDO ACCIÓN CIVIL**

A LA HONORABLE COMISIÓN: Comparece el suscribiente y bajo juramento expone y solicita:
Que soy elector debidamente inscrito como tal, y que no he firmado petición para inscribir otro partido por petición en el periodo de dos (2) años inmediatamente precedentes a la fecha en que suscribo esta petición para que se certifique a la agrupación arriba indicada como partido por petición, para que tenga derecho a participar en las elecciones generales de Puerto Rico.

A los fines de facilitar la comprobación de mi inscripción informo:

Apellido Paterno | Apellido Materno | Nombre

Actualmente inscrito en el municipio de _____

Número Electoral | **Precinto**

Fecha de Nacimiento: Mes / Día / Año

Lugar de Nacimiento

Nombre del Padre:

Nombre de la Madre:

Dirección Residencial electoral:

Respetuosamente sometido el día____del mes de_____de 199___.

Declaro que:
- ❑ Sé leer y escribir
- ❑ No sé leer ni escribir

Firma del elector _____

Jurada y Suscrita ante mi por _____ de las circunstancias personales descritas anteriormente a quien doy fe de conocer en _____ . Puerto Rico, hoy ____ de _____ de 199__ .

Affidavit Núm._____ Notario _____

No escriba en este espacio (para uso solamente por la Comisión Estatal de Elecciones)

Radicado dentro de los siete días	Documento completo	Notarial		Firma es compatible	Acción tomada
❑ Sí	❑ Sí	❑ Completo	❑ Notario no Registrado (R).	❑ Sí	❑ Validada
❑ Fuera de término	❑ Falta información	❑ Falta Sello ❑ Firma ❑	❑ Elector no inscrito a la fecha del endoso (a). ❑ Discrepancia en nombre de padre o madre (g). ❑ Discrepancia de edad (h). ❑ Falta firma o marca del elector (d). ❑ Aparece una marca en sustitución de la firma,cuando el elector ha expresado que sabe escribir (e). ❑ Endoso duplicado (l). ❑ El elector endosó otro partido durante los últimos dos (2) años (b).	❑ No	❑ Rechazada ❑ Devuelta incompleta Fecha:

Iniciales:

Radique en la CEE el original y la primera copia.

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AUG 23 2000

(2)

No. 00-124

In The

Supreme Court of the United States

PARTIDO ACCION CIVIL,

Petitioner,

v.

COMMONWEALTH OF PUERTO RICO

On Petition For A Writ Of Certiorari
To The Supreme Court Of Puerto Rico

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PARTIDO LABORAL UNION SOCIAL IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

JESUS RIVERA
Counsel of Record
P.O. Box 22518
San Juan, Puerto Rico 00931
(787) 765-2615

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9pp

MOTION OF PARTIDO LABORAL UNION SOCIAL FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

Partido Laboral Unión Social hereby respectfully moves for leave to file the attached brief *amicus curiae* in support of the petition for a writ of certiorari in this case. The consent of the attorney for petitioner Mr. Nelson Rosario-Rodriguez has been obtained. The consent of the attorney for respondents Mr. Gustavo Gelpi Abarca and Mr. Ramón Marino-Walker has been requested, but they express they have to ask for permission to the Commonwealth Secretary of Justice, Mr. Angel Rotger-Sabat and Commonwealth Election Commission President Mr. Juan R. Melecio respectively.

There is a warning of hurricane emitted by the National Weather Bureau for Puerto Rico. Commonwealth Government proclaims Puerto Rico in emergency state and suspended labor until new announcement. That means that the Secretary of Justice and the Commonwealth Election Commission cease their operations until new announcement. Attorney for respondents will not discuss the consents for the Amicus Curiae with their clients. That is an effective refusal to consent.

Mr. Roberto Hernandez does not work already with the Commonwealth Justice Department who he represented. The Commonwealth is represented by the Attorney General Mr. Gustavo Gelpi. Mr. Hernandez right now is not attorney for any respondent. Mr. Carlo, when consent was asked, was out of office because a bone fracture said his secretary. They said will call back, but for the

Hurricane they did not call today. Our efforts to communicate has been fruitless. That is also an effective refusal to the consent.

The petition in this case challenges the constitutionality of Puerto Rico's rule that only lawyers may circulate petitions seeking voter support for the placement of new political parties on the ballot. Amicus Partido Laboral Unión Social (the "Party") has, since May of 1998, been seeking to obtain the 97,864 voter endorsements necessary under Puerto Rican law to obtain ballot access. It has been prevented by the lawyer-only requirement from obtaining the necessary signatures.

In 1999, the Party initiated litigation in the courts of Puerto Rico challenging the lawyer-only requirement as a violation of its constitutional rights. Its complaint was dismissed by the trial court. *Partido Laboral Unión Social v. Comisión Estatal de Elecciones,* No. KPE99-2227(904). This decision was affirmed on appeal, *Partido Laboral Unión Social v. Comisión Estatal de Elecciones,* No. KLAN4000507, and a three-judge panel of the Supreme Court of Puerto Rico, with one judge dissenting, denied certiorari. *Partido Laboral Unión Social v. Comisión Estatal de Elecciones, et al.,* No. CC-2000-606. If the petition for certiorari in this case is denied, all new political parties in Puerto Rico, including petitioner Partido Acción Civil and amicus Partido Laboral Unión Social, will effectively be prevented from obtaining the affidavits required for ballot access even though they have the support of the required number of registered voters. Amicus Party believes that its experience with the challenged lawyer-only requirement, which

experience is set forth in the attached brief, will be helpful to the Court in considering whether to grant the petition for certiorari in this case.

Respectfully submitted,

JESUS RIVERA
Counsel of Record
P.O. Box 22518
San Juan, Puerto Rico 00931
(787) 765-2615

INTEREST OF THE AMICUS

The interest of the amicus is set forth in the preceding motion for leave to file this brief.

ARGUMENT

In May of 1998, amicus Partido Laboral Union Social, (hereinafter the Party) began an effort, according with the Electoral Law, to gather the 97,874 endorsements required to register as a party to appear on the Commonwealth of Puerto Rico's 2000 election ballot. According to Section 3101 of the Electoral Law only lawyers that are also notaries can notarize each voter's endorsement. As it is stated in the petition for certiorari of the Civil Action Party, only lawyers admitted to the bar can be notaries in Puerto Rico.

The Party has six lawyers working part-time in the gathering of the endorsements. Those six lawyer-notaries have gathered 46,196 endorsements in 25 months. It was impossible for the Party, despite all its efforts, to recruit more lawyers. The total number of attorney-notaries in Puerto Rico is less than 7,000. The majority of those lawyers are employees. That fact considerably reduces the total number available for petition circulators. All the lawyers that participate in the endorsement gathering for the Party are solo practitioners. But for the solo practitioner it is extremely difficult to embrace the gathering task, because those practitioners have living and office cost's that are not compensated by the $1.00 paid per endorsement by the Election Commission. The charge for normal – non party petition – affidavits taken in the usual

business course is at least $10.00. Such affidavits are notarized in the lawyer's office and the notary has to make only two reports. Ballot endorsements for a party, on the other hand, have to be taken on the streets and four reports have to be made for just $1.00. That is a heavy burdensome effort of gathering the endorsements and the burden is increased because of the required paperwork. The notarial law in Puerto Rico requires that the lawyer-notary has to be present when each person signs his or her affidavit.

Since every lawyer-notary in our Party has his or her own job and office to maintain, it is only on holidays and after working hours that we can gather ballot endorsements. It is not true, as stated in the opinion of the Supreme Court of Puerto Rico, that the volunteers of the Party can effectively collect endorsements. See to the Petition for Certiorari, 14D-15D. Only lawyers can gather endorsements because every person has to complete and sign his or her affidavit before a lawyer-notary. It is a logistic chaos taking persons in advance, talking with the electors that are passing by in the street or are doing their things in the house and then wait for the attorney to arrive and take the signature. The process simply does not work that way. The method of taking endorsements is that the person that talks to the citizens is the same person who can take their signature. The process is described in *Meyer v. Grant*, 486 U.S. 414, 421-422 (footnote 4) (1988).

The problem with the lawyer notarization requirement does not stop there. After the endorsement is gathered, there is a period of seven natural days in which the lawyer-notary must present to the Elections Commission

the original and two copies of each separate endorsement affidavit along with six copies of a report that consists of fifteen names, in alphabetical order, of voters who have signed affidavits. This is a heavy and extremely onerous requirement that is even more difficult to satisfy than the gathering of the endorsements itself.

In addition to the initial report to the Commission, lawyer-notaries make another report, every two weeks, also for the Commission. And for the Supreme Court of Puerto Rico, according with the responsibility as a lawyer-notary, the attorney has to pass by hand every endorsement taken in the affidavit book and make a monthly report to the Court. There are therefore, four reports that the lawyer-notary has to make for each endorsement taken.

Amicus Party has made a real and bona fide effort to comply with the law. But it is impossible for a party, unless it has a great deal of money, to gather sufficient signatures while complying with the lawyer notarization requirement.

It is important to mention that we have no doubt that we could obtain sufficient support to register the Party, if we were able to use party volunteers to gather endorsements as *ad hoc* notaries. The people are eager to give endorsements. The people are not the problem, the problem is the heavy burden that the lawyer notarization requirement places on the gathering of endorsements for a political purpose. That burden has been placed by the three traditional parties that do not want another party that can contend for political power. The inability to use

non-lawyer Party volunteers to gather endorsements severely restricts freedom of speech.

The requirement that only lawyers can gather the endorsements for registering a new party is a blunt action of the traditional parties to freeze the status quo. The legislature is an alter ego of the three traditional parties because all the members of the legislature are members of one of the three traditional parties. They have made a law imposing a requirement (lawyer notarization) with which they themselves did not comply. They know that the requirement that an attorney notarize each endorsement will make it impossible for new parties to gain access to the ballot. The Electoral Commission is also an alter ego of the three traditional parties; each party has a Commissioner and they decide all electoral matters.

Lastly, it is important to mention that the Party filed a suit challenging the constitutionality of the lawyer-notarization requirement in the courts of Puerto Rico. See *Partido Laboral Unión Social v. Comisión Estatal de Elecciones et al.*, No. KPE99-2227(904), in the Appelative Court *Partido Laboral Unión Social v. Commisión Estatal de Elecciones, et al.* No. KLAN4000507; and in the Supreme Court of Puerto Rico *Partido Laboral Unión Social v. Comisión Estatal de Elecciones, et al.*, No. CC-2000-606. The Party's complaint was dismissed, the intermediate appelative court dismissed our appeal and the Puerto Rico Supreme Court denied the certiorari by a vote of two to one.

As we said before, the Party has obtained 46,196 endorsements using six volunteer lawyer-notaries. Although we agree with the Civil Action Party that we cannot be forced to comply with an unconstitutional law,

we have nevertheless tried to do that. But we have not been able to register the party. The excuse given by the Supreme Court is that Civil Action Party has obtained only 30 endorsements, does not apply to us. By denying review in our case, the Supreme Court of Puerto Rico has shown that it believes that the lawyer-notarization requirement is constitutional even when it prevents a party with demonstrated substantial popular support from appearing on the ballot.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JESUS RIVERA
Counsel of Record
P.O. Box 22518
San Juan, Puerto Rico 00931
(787) 765-2615

August, 2000.